TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 29

WILLIAM C. CHANDLER, PETITIONER,

vs.

WARDEN FEETAG

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF [illegible]

PETITION FOR CERTIORARI FILED SEPTEMBER 24, 1934.

CERTIORARI GRANTED APRIL 8, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 39

WILLIAM C. CHANDLER, PETITIONER,

VS.

WARDEN FRETAG

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

INDEX

1-2 [File endorsement omitted]

In the Circuit Court of Knox County, Tennessee

Before the Honorable JOHN M. KELLY, Judge

WILLIAM C. CHANDLER

vs.

WARDEN FREYTAG

No. 16199

PETITION—Filed August 12, 1952

To the Honorable John M. Kelly, Judge:

Your petitioner, William C. Chandler, would respectfully show unto the Court the following, to-wit:

1

Your petitioner is illegally restrained of his liberty by Warden Freytag, Warden or Deputy Warden of the Tennessee State Penitentiary, also known as Brushy Mountain Prison, at Petros, Morgan County, Tennessee, less than 70 miles from Knoxville, Tennessee and is and has been so illegally confined since the 17th day of May, 1952, without authority of law.

2

The cause or pretense of said imprisonment and illegal restraint and confinement is a certain judgment No. 7139, allegedly based on indictment No. 7139 in the Criminal Court of Knox County, Tennessee, charging petitioner with Housebreaking and Larceny of "1 lot of Cigarettes, Chewing Gum and Cigars of the value of $3.00" from a business house. Petitioner, upon his plea of "guilty" to the House Breaking and Larceny charge had his sentence fixed at 3 years confinement in the State Penitentiary by the jury. Petitioner has fully served 3 years time in the State Penitentiary, and avers that he is entitled to his freedom from further restraint or confinement.

3

3 Petitioner, was not by the Grand Jury indicted as an Habitual Criminal, and neither the indictment nor the judgment thereon evidences any notice to Petitioner that he would be tried as an habitual criminal, and Petitioner avers that he never received any formal written notice of the nature and cause of the Habitual Criminal accusation against him, nor a copy thereof,

to which he was entitled under Article 1, Sec. 9, of the Constitution of Tennessee, and that the judgment of the Court committing Petitioner to the State Penitentiary for the rest of his natural life as an Habitual Criminal, is void on its face, in that it fails to conform to the indictment and also fails to show that Petitioner was a fourth offender subject to punishment as an Habitual Criminal.

4

Petitioner was indicted on March 10, 1949 and released on bond awaiting trial on the House Breaking and Larceny charge. Petitioner was guilty of the House Breaking and Larceny as charged in the indictment, and was advised that the sentence on such charge could be from three to ten years. Petitioner is ignorant of legal procedures, and was without financial resources to pay an attorney, and knowing his guilt on the Housebreaking and Larceny charge felt that an attorney could do him no good on said charge. While out on bond Petitioner went merrily on his way without any notice whatever that he would be tried as an Habitual Criminal or that such an accusation was contemplated by the Attorney General.

5

On May 17, 1949, petitioner appeared for trial and just before trial time was told that he would be tried as an Habitual Criminal. Petitioner asked the Court for additional time to get an attorney when advised that he was in danger of being sentenced to prison for the rest of his natural life, but the Court advised Petitioner that he had been out on bond and had had time to get an attorney and denied him a continuance. The Court attempted to explain the Habitual Criminal Act to Petitioner and his brother James Chandler a minister of the gospel. The Court
4 then suggested that Petitioner consult with his said brother and other members of his family then present in the Court Room. Petitioner went into a huddle with members of his family and was advised that since he was guilty of House Breaking and Larceny, as charged, there was nothing for him to do but plead guilty. Petitioner is a colored man, with little education and no technical legal training and no financial resources. He was surprised, bewildered and confused and did not know that he was entitled to plead guilty on the Housebreaking and Larceny charge and at the same time plead not guilty to the Habitual Criminal accusation made against him for the first time on the morning of the trial. Petitioner's brother, James Chandler, did most of the talking with the Court, and although he is a minister of the gospel he is a man of limited education and unfamiliar with legal proceedings, but has an abiding faith in the justness of punishment for all sinners and

offenders. The said James Chandler was totally unqualified to advise petitioner of his legal rights, but at the suggestion of the Court petitioner was referred to said brother and other members of his family for legal advice on the course he should pursue, and they advised petitioner that there was nothing to do but plead guilty, and petitioner entered his plea of guilty without knowingly, intelligently and understandingly knowing his rights or the consequences of such plea, except to the House Breaking and Larceny charge.

6

Petitioner was then and there put to trial without an attorney. One witness testified to the House Banking and Larceny as charged in the indictment, but no judgments of prior conviction or other evidence was submitted to the jury on the Habitual Criminal Charge, as required by Section 11738 of the Code of Tennessee. The jury was not charged by the Court, all in violation of Tennessee Code Sections 11749, 11750 and 11751. The jury returned its verdict finding petitioner guilty of Housebreaking and Larceny and fixed his punishment at three years in the State Penitentiary. The jury further returned a verdict of guilty of being an Habitual Criminal, whereupon the Court sentenced petitioner to the State Penitentiary for the rest of his natural life.

7

Petitioner further shows to the Court that neither in the indictment or the judgment is there any allegation that petitioner was brought to trial as an Habitual Criminal, and the verdict of the jury finding petitioner guilty as an Habitual Criminal is not supported by the indictment nor recitals in the judgment that he was so put to trial. Further, the record fails to show whether petitioner's plea of guilty of being an Habitual Criminal was entered under Code Section 11863.1, for which no additional punishment could be exacted, or under Code Section 11863.2 providing for sentence to life imprisonment.

8

Attached hereto as exhibit to this petition is copy of Indictment No. 7139 and Judgment in Cause No. 7139, duly certified by the Clerk of the Criminal Court of Knox County, Tennessee.

9

Despite the recital in the Judgment that petitioner came, having counsel present, petitioner avers that he had no legal counsel of his own, and he is advised and believes that the Court will so

testify, and if his brother and members of his family be said to have been his counsel he says that they were totally unqualified to legally advise or represent him in a matter involving the rest of his natural life.

10

Petitioner avers that the proceedings heretofore set forth were in violation of due process of law as provided by the 14th Amendment to the Constitution of the United States, and in violation of the law of the land under Art. 1, Sec. 8 of the Constitution of Tennessee, in that he was not charged as an Habitual Criminal in the Indictment, and in that his plea of guilty of being an Habitual Criminal was not intelligently and knowingly entered; and in that he had no formal written notice of the Habitual Criminal accusation; and in that he was surprised and bewildered by such oral accusation on the morning of trial, and in that the court refused him a continuance and failed to appoint competent legal counsel for him.

11

Petitioner avers that the Habitual Criminal Act as applied to this petitioner is unconstitutional in that it provides for no formal written notice of the nature and cause of the accusation against him as provided in Art. 1, Sec. 9 of the Constitution of Tennessee, and that the Court's denial of counsel to petitioner was also violative of said constitutional provision.

12

Petitioner further avers that the oral Habitual Criminal accusation, not by the Grand Jury found, was a proceeding by information, and violative of Art. 1, Sect. 14 of the Constitution of Tennessee, Art. 11, Sec. 16 of the Constitution of Tennessee and that the entire proceeding was violative of Due Process of Law under the Federal Constitution and the Law of the Land under the Constitution of Tennessee.

13

Petitioner avers that he has served more than the 3 year sentence for Housebreaking and Larceny, and that so much of Judgment No. 7139 as adjudges him to be an Habitual Criminal and subject to Life imprisonment is void.

14

Petitioner would further show that practically all of his witnesses are in Knox County, Tennessee, and that the cause of justice would be aided by a hearing in said county.

15

The legality of petitioners restraint has not already been adjudged upon a prior proceeding of this character, to the best of applicant's knowledge and belief.

16

This is petitioner's first application for a Writ of Habeas Corpus.

(S.) WILLIE MAE CHANDLER,
Acting for Petitioner,
William C. Chandler
(S.) EARL E. LEMING,
Petitioner's Attorney,
608 Empire Building,
Knoxville, Tennessee
Phone 5-4130

Duly sworn to by Willie Mae Chandler. Jurat omitted in printing.

7a EXHIBIT No. 1 TO PETITION

Criminal Court for Knox County, March Term, 1949

The Grand Jurors for the State of Tennessee, upon their oaths, present

That William C. Chandler heretofore, to-wit: On the — day of January, 1949, in the State and County aforesaid, then and there with force and arms feloniously and forcibly did break and enter a certain house of Roscoe, doing business as the Melody Club the same being a business house and other than a mansion house with the intent of the said defendant, then and there to commit a felony, to-wit: A larceny, that is to say, with the intent to feloniously take, steal and carry away the goods and chattels of Roscoe Sutton then and there to be had and found in said house and so to deprive the true owner aforesaid, of the use thereof against his will and consent, contrary to the statute and against the peace and dignity of the State.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that William C. Chandler heretofore, to-wit: On the — day of January, 1949, in the State and County aforesaid, feloniously 1 Lot of Cigarettes, Chewing Gum and Cigars of the value of $3.00, the further description thereof to the Grand Jurors unknown of the goods and chattels of Roscoe Sutton then and there being found, said defendant, feloniously did steal, take and carry away with intent to deprive said owner thereof against his will,

contrary to the statute and against the peace and dignity of the State.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that William C. Chandler heretofore, to-wit: On the — day of January, 1949, in the State and County aforesaid, 1 Lot of Cigarettes, Chewing Gum and Cigars, the further description thereof to the Grand Jurors unknown, of the value of $3(0),
7b of the goods and chattels of Roscoe Sutton before then feloniously stolen, taken and carried away by someone to the Grand Jurors unkrown, fraudulently and feloniously did receive and buy, conceal and aid in concealing, well knowing the same to have been feloniously stolen, taken and carried away with intent of the said defendant, then and there to cheat, deprive and defraud said owner of the use thereof, contrary to the statute and against the peace and dignity of the state.

(S.) HAL H. CLEMENTS, JR.,
District Attorney General.

[Endorsed:] Filed Aug 12, 1952. 16139. (S.) Rhoten Byington, Clerk. 16199. William C. Chandler vs. Warden Freytag. Exhibit No. 1. Witness Identified and Approved. Date: Oct. 4, 1952. (S.) John M. Kelly, Circuit Judge. Filed Oct. 6, 1952. W. H. Eagle, Clerk.

[Endorsed:] No. 7139. Indictment. The State vs. William C. Chandler. Housebreaking, Larceny and Receiving Stolen Property. Roscoe Sutton, Prosecutor. Witnesses: Roscoe Sutton, Capt. Lee, Large, A. W. Christenberry. Clerk: Summon above named witnesses for the State. Hal H. Clements, Jr., District Attorney General.

Witnesses sworn by me in presence of the Grand Jury March 10, 1949. E. F. King, Foreman of the Grand Jury.
Filed 10 day of March, 1949. Horace E. Cate, Clerk.
A True Bill: E. F. King, Foreman of the Grand Jury.

STATE OF TENNESSEE,
KNOX COUNTY:

I, HORACE E. CATE, Clerk of the Criminal Court for the County of KNOX, in and for the County and State aforesaid do hereby certify that the foregoing is a true and perfect copy of the Indictment in the case of State vs. William C. Chandler upon a charge of HBL & RSP as the same appears of record in my office.

Witness my hand, and seal of said Court at office in Knoxville, this the 23rd day of June, 1952.

(S.) HORACE E. CATE,
Clerk.

[SEAL.]

7c EXHIBIT No. 2 TO PETITION

Tuesday, May 17, 1949

Court met pursuant to adjournment, present and presiding the Honorable J. Fred Bibb, Judge of the Criminal Court for Knox County, when the following proceedings were had and entered of record, to-wit:

B I B L A R S P

No. 7139

THE STATE

vs.

WM. C CHANDLER

Came the Attorney General for the State, also defendant in custody, having counsel present, and on hearing the indictment read for plea thereto, defendant says that he is guilty of Housebreaking and Larceny and also that he is guilty of being an Habitual Criminal. Thereupon came the following jury, to-wit: C. R. Spangler, J. L. Clancy, W. D. Claxton, F. G. Blake, E. W. Clark, C. C. Hansard, T. A. Blake, M. E. Dawson, R. L. Gentry, Sam Hall, C. A. Hensley and Ed Eisenberg, all good and lawful men, citizens of Knox County, who having been summoned, selected and impaneled, were sworn to well and truly ascertain and fix the punishment of the defendant. Having heard the proof in this cause and charge of the Court, upon their oaths the jurors say: they find the defendant guilty of Housebreaking and larceny as charged and fix his punishment at 3 years confinement in the State Penitentiary and also find him guilty of being an Habitual Criminal. It is therefore the judgment of the Court, upon the verdict of the jury, that the defendant for the offense of which he stands convicted, shall be committed as an Habitual Criminal to the State Penitentiary for the remainder of his natural life, as provided in section 11863.2 of the Code, and shall pay all the costs of this prosecution for which execution may issue. The Clerk of this Court will make out and furnish to the warden of the penitentiary, transcript of the judgment of the Court in this cause at his earliest convenience.

Court Adjourned Until Tomorrow Morning at 9: O'Clock.

J. FRED BIBB,
Judge

7d STATE OF TENNESSEE,
KNOX COUNTY:

I, HORACE E. CATE, Clerk of the Criminal Court for the County of Knox, in and for the County and State aforesaid do hereby certify

that the aforegoing is a true and perfect copy of the Judgment in the case of The State vs. Wm. C. Chandler upon a charge of HBL & RSP as the same appears of record in my office.

Witness my hand and seal of said Court at office in Knoxville, this the 25 day of June, 1952.

(S.) HORACE H. CATE.
[SEAL.] *Clerk.*

Filed Aug. 12, 1952. 16199. (S.) Rhetea Byington, Clerk.

EXHIBIT No. 2

16199

WILLIAM C. CHANDLER

vs.

WARDEN FREYTAG

Witness: Identified and Approved.

Date: Oct. 4, 1952. (S.) John M. Kelly, Circuit Judge.

Filed Oct. 6, 1952. W. H. Eagle, Clerk.

8-10 IN THE CIRCUIT COURT OF KNOX COUNTY, TENNESSEE

WRIT OF HABEAS CORPUS—August 12, 1952

STATE OF TENNESSEE,
County of Knox:

To Warden or Deputy Warden FREYTAG, or such other person as may be holding, restraining and confining Wm. Clyde C. Chandler in the Tennessee State Penitentiary, at Brushy Mountain, Petros, Tennessee:

You are hereby commanded to have the body of Clyde C. Chandler, Number 43839, who is alleged to be unlawfully detained by you, before me at 9:00 A. M. O'clock, August 20, 1952 in the Knox County Courthouse, to be dealt with according to law, and have you then and there this writ, with a return thereon of your doings in the premises.

This 12th day of August, 1952.

(S.) JOHN M. KELLY.
Circuit Court Judge.

"Memorandum Opinion", Kelly, J. was adopted verbatim, and incorporated in the "Opinion of the Tennessee Supreme
11-17 Court", Omitted. Printed side page 98 infra.

18 In the Circuit Court of Knox County, Tennessee

[Title omitted]

ORDER DISMISSING PETITIONER'S ACTION AND REMANDING HIM TO CUSTODY OF WARDEN OF THE STATE PENITENTIARY AT PETROS
October 2, 1952

This cause came on to be heard on the 20th day of August, 1952, before the Honorable John M. Kelly, Judge of the First Circuit Court for Knox County, Tennessee, upon the Petition of Petitioner, William C. Chandler, for Writ of Habeas Corpus and Certified copies of the Indictment and Judgment in Cause No. 7139 out of the Criminal Court for Knox County filed as Exhibits No. 1 and 2 respectively to the Petition, and upon oral testimony of witnesses upon the hearing; the Writ of Habeas Corpus addressed to Warden or Deputy Warden Freytag having issued on August 12th, 1952, returnable August 20, 1952.

Upon the hearing the cause was taken under advisement by the Court which on the 4th day of September, 1952 handed down its "Memorandum Opinion", which is ordered to be made a part of the record in this cause, dismissing Petitioner's action and remanding him to the custody of the Warden of the State Penitentiary at Petros, under the sentence of life imprisonment.

It is THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's action be dismissed and that Petitioner be remanded to the custody of the Warden of the State Penitentiary at Petros under the sentence of life imprisonment under Judgment No. 7139 which is in all things a valid judgment. The costs of the cause are adjudged and assessed against Petitioner for which execution may issue.

Entered this the 2nd day of October, 1952, Nunc Pro Tunc September 4, 1952.

19-21 Thereupon Court adjourned until Friday, October 3, 1952, at nine o'clock A. M.

(S.) JOHN M. KELLY, *Judge*.

22-23 Bond on appeal for $250.00 filed September 30, 1952 omitted in printing.

24-28 Clerk's Certificate to foregoing transcript omitted in printing.

29 [File endorsement omitted]

IN THE CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

[Title omitted]

BILL OF EXCEPTIONS—Filed October 6, 1952

This Habeas Corpus Proceeding came on to be heard on the 20th day of August, 1952 before the Honorable John M. Kelly, Judge of the First Circuit Court for Knox County at Knoxville, Tennessee upon the petition of Petitioner for a Writ of Habeas Corpus and Certified copies of the Indictment and Judgment in cause No. 7139, out of the Criminal Court for Knox County, filed as exhibits to the petition, and upon oral testimony of witnesses upon the hearing.

The Court suggested a brief statement of the case, stating that the Court had already read the Petition and the Certified copies of the indictment and Judgment in cause No. 7139 filed as exhibits to the petition, copies of which are set forth as Exhibits 1 and 2 below.

EXHIBIT "1"

Copy of Indictment No. 7139: Omitted. Printed side page 7a ante.

30 EXHIBIT "2"

Copy of Judgment No. 7139: Omitted. Printed side page 7c ante.

The oral testimony of witnesses at the hearing of Petitioner's Habeas Corpus Proceeding, was taken in shorthand and duly
31-33 transcribed by Miss Len G. Gumphrey, Court Reporter, and is attached, included and made a part of this Bill of Exceptions, as follows:

34 In the Circuit Court of Knox County, Tennessee

[Title omitted]

HABEAS CORPUS PROCEEDINGS—Filed October 6, 1952

This cause came on to be heard on August 20, 1952, before the Honorable John M. Kelly, Judge of the First Circuit Court, in the Court Room, Court House, Knoxville, Tennessee, when the following testimony was introduced and proceedings had.

The pleadings were not read but the case was stated briefly to the Court.

The witnesses were sworn and excused under the rule.

J. L. CLANCY, the first witness, being duly sworn, testified as follows, on

DIRECT EXAMINATION

By Mr. LEMING:

Q. Mr. Clancy, your name is J. L. Clancy, and you were a juryman in this cause?

A. Yes, sir.

Q. Do you recall the case?

A. Yes, sir.

Q. I will ask you to state what transpired at this trial as near as you can recall?

35 A. There wasn't any trial.

Q. Was the defendant required to stand up and plead?

A. When Judge Bibb told him to stand up, he stood up.

Q. Was a plea entered as to housebreaking and larceny?

A. $3.10 and something——

Q. Did he plead guilty to the indictment when he stood up?

A. It seems to me he admitted it.

Q. Did he stand up a second time and say he would plead guilty?

A. He didn't say anything.

Q. How long did the trial take, Mr. Clancy?

A. Just a few minutes.

Q. Two or three or five minutes?

A. Five minutes.

Q. Was there any explanation as to what his plea would mean?

MR. GREENWELL: I want to interpose an objection at this time—it looks like we are getting into this question—the writ of habeas corpus does not lie for the correction of errors and it is obviously what we are coming to——

THE COURT: I sustain that. The Attorney General objects as the writ of habeas corpus does not lie for the correction of errors.

MR. LEMING: That is true, but we are attempting to show as to the habeas corpus that the judgment of the court was void because he was denied due process——

THE COURT: What does the record show?

36 MR. LEMING: The Judgment reads:

"Court met pursuant to adjournment, present and presiding the Honorable J. Fred Bibb, Judge of the Criminal Court for

Came the Attorney General for the State, also defendant in custody, having counsel present, and on hearing the indictment read for plea thereto defendant says that he is guilty of House-breaking and Larceny.

The COURT. That was housebreaking and larceny and receiving stolen property?

MR. LEMING. Yes, sir. (Continuing to read)

"and also that he is guilty of being an Habitual Criminal. Thereupon came the following jury, to-wit: C. R. Spangler, J. L. Clancy, W. D. Claxton, F. G. Blake, F. W. Clark, C. C. Hansard, T. A. Blake, M. F. Dawson, R. L. Gentry, Sam Wolf, C. A. Hensley and Ed Eisenberg, all good and lawful men, citizens of Knox County, who having been summoned, selected and impaneled, were sworn to well and truly ascertain and fix the punishment of the defendant. Having heard the proof in this cause and charge of the Court, upon their oaths the jurors say: They find the defendant guilty of housebreaking and larceny as charged and fix his punishment at 3 years confinement in the State Penitentiary and also find him guilty of being an Habitual Criminal. It is therefore the judgment of the Court, upon the verdict of the jury, that the defendant for the offense of which he stands convicted, shall be committed as an Habitual Criminal to the State Penitentiary for the remainder of his natural life, as provided in Section 11462 of the Code, and shall pay all the costs of this prosecution for which execution may issue. The Clerk of this Court will make out and furnish to the Warden of the penitentiary, transcript of the judgment of the Court in this cause at his earliest convenience."

MR. LEMING. We filed as Exhibits to this case certified copy of both the indictment and this judgment. What we are attempting to do is not to correct errors, but to show that the judgment of the Court was void in so far as habeas corpus is concerned, in that there was a denial of due process. In the case of Zerbst v. Johnson

the Court held that even having jurisdiction in the first place, fail-
ing to grant to the accused those rights and privileges inclu-
37 under due process the Court should lose all jurisdiction.

Mr. GREENWELL: I want to raise the further objection in what they are doing here, trying to have a juryman impeach his own verdict.

The COURT: That has not happened yet. Of course, a juryman does not impeach his own verdict.

Q (Mr. Leming continuing) Did the accused have an attorney present?
A No, sir.
Q Did you see him advising with anyone regarding his case.
A I never.
Q You say it only took five minutes for the whole proceeding?
A That is my best recollection.
Q Did the Court read a written charge to the jury?
A I don't think so, we all just agreed to it.
Q Just regular proceeding, you say you all agreed to it?
A Yes, sir.
Q You didn't go out of the jury box?
A To my best recollection we didn't.
Q Just held up your hands and agreed?
A Yes.
Q No written charge to the jury, charging them on the law?
A No, not as I recall.

Mr. GREENWELL: If Your Honor please, this goes right back to the same thing.
38 The COURT: There is a question of presumption here, presumption that the proceedings was regular.

Mr. LEMING: We are attempting to show, Your Honor, that it was not regular—that is the purpose of getting this evidence in.

Mr. GREENWELL: We say, it was regular, but for the purpose of argument if it is not regular I am going to object to any error in the trial, if there was such, it has no place in this hearing.

The COURT: Just see what happened down there that did deprive the defendant of his rights.

Mr. GREENWELL: Very well, Your Honor.

Q You say there was no charge read to the jury?
A That is my best recollection.
Q And then the Court required the defendant to stand up?
A Yes.
Q Did the Court sentence the defendant at that time?
A He said he hated to do it, he knew him well, but he had to do it.
Q Were there any previous judgments read to the Court——

Mr. GREENWALL: We interpose the same objection.

The COURT: Very well.

Q. Was there any testimony whatever of prior convictions of this defendant read?

A. No.

Q. In other words there was no evidence whatever offered of prior convictions of this defendant.

39 A. To my best recollection, I would say no.

Cross examination waived.

(Witness excused.)

WILLIAM C. CHANDLER, the petitioner, being duly sworn, testified as follows, on

DIRECT EXAMINATION.

By Mr. Leming:

Q. State your name to the Court?

A. William C. Chandler.

Q. On the 17th day of May, 1949, were you put on trial?

A. Yes, sir.

Q. What was the nature of the accusation?

A. House breaking and larceny and receiving stolen property.

Q. Had you been out on bond sometime prior to that?

A. Yes, sir.

Q. How long had you been out on bond, approximately?

A. About three months.

Q. And you were guilty of the housebreaking and larceny?

A. Yes, sir.

Q. You had no defense whatever to that?

A. No, sir.

Q. What day were you first advised that you also were going to be tried as an habitual criminal?

A. That morning.

Q. May 17, 1949?

A. Yes, sir.

40 Q. What was said in regard to that?

A. Just said they were going to try me as an habitual criminal.

Q. Did you say anything to the Court?

A. I tried to get him to put the trial off and let me get an attorney.

Q. What did the Court say as to that?

A. He said he could not put it off.

Q. Was there anyone there protecting your rights?

Mr. GREENWELL: We object to all of this as incompetent

The COURT: If you proceed like this in every case—well go ahead.

Q. On the morning of the 17th who was with you at the defense table?

A. No one present at the table with me.

The COURT: I will point out to you, Mr. Leming, that this record says "also the defendant in custody, having counsel present"—he says in direct denial of the judgment that he did not have counsel—I am pointing out that there is a conflict in this evidence—proceed.

Q. I will ask you if James Chandler, Rev. James Chandler was present and rendered any advice?

A. He was present.

Q. Did he talk to the Court?

A. He and Judge Bibb talked.

Q. After he and Judge Bibb talked did he advise you?

A. No, sir, he came back over and talked to me.

Mr. GREENWELL: We object.

The COURT: I can't see that has—is Rev. Chandler an attorney?

A. No, sir.

41 Q. Your brother advised you as to the plea to enter?

A. I told him I was guilty of house breaking and larceny.

Q. What plea did you enter?

A. House breaking and larceny.

Q. Did you enter pleas as to being an habitual criminal?

A. I only entered one plea.

Q. Did you have any written notice as to the habitual criminal part?

A. I did not.

Q. How long did this proceeding take?

A. Not over 10 minutes.

Q. Was any evidence read to the Court as to any prior convictions?

A. No.

Q. Did he read any instructions to the jury?

A. He did not.

Q. Were the instructions oral?

A. I don't know what you mean.

Q. Did he talk to them?

A. Only thing they just agreed.

Q. And he sentenced you as a habitual criminal?

A. Yes, sir.

Q. Did the jury ever leave the box?

A. They did not.
Q. They reached the conclusion there?
A. Yes, sir.

Mr. LEMING: I think that is all.

CROSS-EXAMINATION.

By Gen. GREENWELL:

Q. The Court did ask you if you pleaded guilty to the
42 charge of house breaking and larceny and also habitual criminal?
A. House breaking and larceny.
Q. Didn't he tell you you were accused of house breaking and larceny and receiving stolen property and being an habitual criminal?
A. Not until that morning and I told him I wanted time.
Q. That was when the matter first came up—your brother talked to the Attorney General—and you saw the records there on the table in those big red books, and after that you pled guilty.
A. No, sir.
Q. You know Mr. Line, Deputy Court Clerk?
A. I probably know him.
Q. Did you see him in there reading some books to the judge and jury?
A. No, sir.
Q. You saw those records read to the jury?
A. No, sir.
Q. Were you not shown your F B I finger prints by General Clements before they read?
A. They never showed me nothing.
Q. You have been convicted before?

Mr. LEMING: I object to going into previous convictions.
The COURT: He was asked whether anything was read into the record at the trial about former convictions.
Mr. LEMING: Your Honor, the hearing here is to determine whether the habitual criminal charge became void.
The COURT: Let him answer.

43 A. Three times.
Q. You say you have been convicted three times?
A. Yes, sir.

Gen. GREENWALL: That is all.

Rev. JAMES CHANDLER, the next witness, being duly sworn, testified as follows, on

DIRECT EXAMINATION.

By Mr. LEMING:

Q. You name is Rev. James Chandler?

A. Yes.

Q. Reverend, on May 17, 1949, were you present at the trial of William Chandler here?

A. I was.

Q. In the Criminal Court?

A. I was.

Q. On the morning of the trial when you went there what did you know he was accused of?

A. House breaking and larceny and receiving stolen property.

Q. When did you first learn that he was also charged as an habitual criminal?

A. Judge Bibb mentioned it to me that morning.

Q. That was your first knowledge of it?

A. Yes, sir.

Q. Did you have any conversation with Judge Bibb?

A. I did.

Gen. GREENWALL: We raise the same objection.

44 THE COURT: Yes, but I am going to let this record be as full as possible.

A. The Judge first asked me a question as to what we were going to do with William and I said that is a $64 question, then the Judge motioned for me to come up and we talked and I mentioned some of the things my mother had said to me. I told him Mother had informed me when he was a small child he was accidentally hit in the head with an ax when we were residing at Concord some 43 years ago.

Q. What did the Judge say regarding the plea?

A. He informed me that there was nothing he could do but plead guilty of housebreaking and larceny.

Q. What did he say about an habitual criminal?

A. He didn't mention it to me at that time.

Q. Did he have you consult with the defendant here?

A. Not at the time.

Q. Did you talk to him?

A. As he didn't have any representative the only thing he could do was to plead guilty.

Q. Was there any double plea as to housebreaking and larceny

and receiving stolen property and also a separate plea as to being an habitual criminal?

A. Not to my knowledge.

Q. How long did this proceeding take from the time it started?

A. I could not be definite, but it seems I was not in the Court Room more than eight or ten minutes.

Q. Was any evidence read to the jury regarding any prior convictions?

A. Not in my presence.

45 Q. You were there?

A. Yes.

Q. Did the Court read a written charge to the jury?

A. Not while I was present.

Q. But you were there?

A. Yes.

Q. Did the jury leave the jury box?

A. Not while I was there.

Q. And you were present?

A. Yes, sir.

Q. And the Court sentenced him as an habitual criminal?

A. Yes.

Q. But you are positive no evidence was read or given to the jury of any former convictions?

A. Not in my presence, no.

Q. But you were there?

A. Yes.

Mr. LEMING: You can ask him.

CROSS-EXAMINATION.

By Gen. GREENWELL:

Q. Reverend, didn't this happen shortly before or when this case was called—you were present there with your brother?

A. This is right.

Q. Other members of your family were there, as I recall?

A. His wife.

Q. You were called first to talk with General Clements?

A. Gen. Clements was not present. I didn't have any conversation except with Judge Bibb.

46 Q. Who told him what he was to be tried on?

A. The Judge told him that morning and he asked for more time.

Q. Well, you knew about it?

A. I didn't until the Judge told me.

Q. But you knew it before it was suggested that he was to plead guilty?

A. The Judge called me to him and he told me in these words, he said "It is my understanding"

Q. And he also told you the record was there showing prior convictions, and you saw the books there on the table?

A. I didn't see any books, he said he understood that the Attorney General was going to try him as an habitual criminal.

Q. That was explained to the jury?

A. Not in my presence.

Q. But you stayed in there?

A. Yes, sir, I was in there.

Q. Didn't you hear him tell the jury that this man was submitting on house breaking and larceny and as an habitual criminal?

A. No, sir.

Q. Where were you?

A. Sitting there at a table.

Q. And you didn't see Mr. Line from the Criminal Court read the record?

A. No, sir, I think there was a lady there.

Q. Did the lady read it?

A. No, sir.

47 Q. How close were you?

A. From the table—The only man I heard was the swearing of witnesses.

Q. Who from the Attorney General's Office was there—I want to test your memory?

A. I don't recall.

Q. Did you see books on the table?

A. There were several tables. I am positive there were not any books there—I was up talking to the Judge.

Q. But you were over at the other table?

A. I don't think I sat down that long, I didn't have time.

Q. You mean you didn't have time before he swore the jury to see the books there on the table?

A. I could not be positive, I wasn't interested in books.

Q. You don't know whether they were read or not?

A. In my presence they were not read.

(Witness excused.)

WILLIE MAE CHANDLER, the next witness, being duly sworn, testified as follows, on

DIRECT EXAMINATION.

By Mr. LEMING:

Q. Your name is Willie Mae Chandler?
A. Yes.
Q. On May 17, 1949, were you present at the time the defendant here was tried for housebreaking and larceny?
A. Yes.
48 Q. What was your understanding he was charged with when you went to court?
A. I know'd what he was charged with, the Judge told him.
Q. Did the Judge tell him he was charged with being an habitual criminal?
A. Yes.
Q. Did he say anything about his being charged with house breaking and larceny?
A. Yes.
Q. When was the first time you knew your husband was charged with being an habitual criminal?
A. The morning of the trial.
Q. Did you talk with the Judge?
A. I did not.
Q. Did you see anyone or know of anyone talking with the Judge regarding William's record?
A. No one but his brother.
Q. When he talked to the Judge, did he come back and talk with William?
A. He just came back, I don't know what he said.
Q. How long did this trial last?
A. About ten minutes.
Q. Was there any evidence read to the jury about his having been convicted on prior occasions?
A. There was not.
Q. Were there any witnesses sworn that testified he had been convicted before?
A. No.
Q. Did the Court read a written charge to the jury, regarding his record?
49 A. Not as I heard.
Q. You were there?
A. Yes, sir.
Q. Did the jury leave the jury box?
A. No.

Q. The Judge just asked them if they agreed with the plea of guilty and they said yes, is that correct?

A. Yes.

Mr. LEMING: I think that is all.

Mr. GREENWELL: I don't care to ask her anything.

Mr. LEMING: I can call Mrs. Ridenour to show there was no charge in the record of an habitual criminal.

The COURT: All right, put her on.

Mr. LEMING: I was going to say that if we could agree on that.

Mr. GREENWELL: All right—

Mr. LEMING: We will stipulate there was no charge to the jury in the court records—no written charge.

Mr. LEMING: I believe that is all of the testimony.

Mr. GREENWELL: Unfortunately Judge Bibb and Mr. Line are both out of town—all I could do is to give my own version.

The COURT: Let's hear it.

General GREENWELL, being duly sworn testified as follows:

William Chandler was indicted by the grand jury on or about March 10, 1949, at that time he was out on bond. The East Tennessee Bonding Company had made bond for $1000.00 on house breaking and larceny. He was duly indicted on March 10th and thereafter the case was set for hearing on May 17, 1949. The case came up on the Docket, as I recall—I am testifying wholly from memory—he said he wanted the case put off as he was advised by the Court that he was being tried as an habitual criminal in addition to house breaking and larceny. He asked that the case be put off so he could get a lawyer and Judge Bibb told him he had had since January up to May to get a lawyer. Judge Bibb has a set rule that he does not appoint counsel for any defendant that is able to make bond. He says that if they are able to hire a bondsman, they are able to get a lawyer, and he does not appoint one.

In this particular case William was advised that he was being tried as an habitual criminal, and he wanted the case put off. Judge Bibb talked to him and his brother and he said "I will plead guilty to those other things" he said he had committed. In preparation of the trial I had the Minute Books brought into the Court Room the records. They went into a hurdle, and he said that he might as well plead guilty in those other cases. Thereupon proof was put on by Mr. Sutton, the prosecutor, and he admitted that he was guilty of going into the Melody Club out on Central and taking cigarettes and that he was guilty of house breaking and larceny. Then after hearing the testimony, Mr. Line read the three former convictions to the jury. The Judge didn't furnish the Jury with a written charge as he does in cases on trial, but he did explain to them the habitual criminal Act and penalty, as well as house breaking and larceny.

and charged them that if, after hearing his plea of guilty to the two charges, if they agreed to that he was to take three years in house breaking and larceny, and if they agreed to hold up their right hands; and if he was guilty as an habitual criminal also
51 to hold up their right hands, and so that was their verdict, he was found guilty of being an habitual criminal and of house breaking and larceny. You want to ask anything, Mr. Leming?

CROSS-EXAMINATION.

By Mr. LEMING:

Q. You admit that he had no attorney?

A. No, sir, I don't believe he had a lawyer.

Q. His brother seemed to be acting as counsel?

A. Yes, he went back and forth a whole lot?

Q. But he had no other counsel?

A. No.

Q. He was only sentenced as an habitual criminal, he was not sentenced on the three charges?

A. I don't believe so.

Q. The jury did sentence him to three years on housebreaking and larceny—that is in the record—and the Judge did sentence him as an habitual criminal "upon the verdict of the jury, that the defendant for the offense of which he stands convicted, shall be committed as an Habitual Criminal, to the State Penitentiary for the remainder of his natural life"—there was no formal written charge as an habitual criminal?

A. No, sir, there was not.

Q. And he was advised for the first time that morning that he was being tried as an habitual criminal?

A. I don't know whether before—probably he wasn't.

Q. He did ask for a continuance so he could get an attorney, when he found he was on trial as an habitual criminal?

52 A. He asked to get the case put off, I don't remember what grounds, probably that.

Q. Do you have a definite, positive and independent recollection of the reading of prior judgments by Mr. Line or any other person—prior judgments of conviction?

A. I am not sure, we had the Minutes in there, it is my impression that Mr. Line read them, or it could be Mr. Cate.

Q. Are you positive those prior judgments were read to the jury?

A. Yes, sir. Yes, sir.

Q. How long did these whole proceedings take?

A. If you count the time the defendant and his brother talked around about it, I would say 20 or 30 minutes—after we got down to business it probably took about 10 minutes.

Q. The jury didn't go out of the box?

A. I don't think they did.

Q. The Court didn't read any written charge?

A. No, sir.

Q. No written charge whatever as to the house breaking and larceny, and the habitual criminal.

A. No, sir, he only told them orally.

Q. Did the Court read the statute, the Habitual Criminal Act.

A. I am not sure he did that.—You might add there is never any written charge where the complainant and defendant come to an agreement.

The Court:

Q. What was that?

A. The Judge never writes a charge where the State and
53 the defendant have agreed, he generally only makes the statement as to what they have agreed on.

Q. General is it not illogical that an accused, who could get no more than life, would plead guilty, when the jury could find him not guilty as an habitual criminal, even though he might be so accused?

A. You are asking whether that would be illogical—I just could not say as to that. I might say that he is not the first that has pleaded guilty as an habitual criminal, others have entered that plea.

Mr. Leming: I think that is all.

Thereupon counsel argued the case.

Thereupon the Court instructed both Mr. Leming and General Greenwell to submit lists of cases substantiating their respective contentions.

The foregoing was all the evidence introduced and proceedings had in the trial of the above styled cause.

54 In the Circuit Court of Knox County, Tennessee

Order Settling Bill of Exceptions—October 6, 1952

This was all of the proceedings and all of the evidence heard upon Petitioner's Habeas Corpus Proceeding.

The Petitioner tenders this his Bill of Exceptions, to the findings, conclusions and Judgment of the Court dismissing his action, which is signed, sealed and ordered to be, and is made a part of the record in the case.

This the 6th day of October, 1952.

(S.) John M. Kelly,
Judge

[File endorsement omitted]

(S.) Carl M. Greenwell,
Ass't Atty. Gen'l.
(S.) Esrl E. Leming,
Atty. for Petitioner.

55 IN THE SUPREME COURT AT KNOXVILLE, TENNESSEE

[File endorsement omitted]

[Title omitted]

ASSIGNMENT OF ERRORS—Filed November 5, 1952

I

HISTORY OF THE CASE

Plaintiff in Error, William C. Chandler, hereinafter called Petitioner, filed his petition for Writ of Habeas Corpus on August 12, 1952 before the Honorable John M. Kelly, Judge of the First Circuit Court for Knox County, Tennessee (R. 1,2,3,4,5,6) with certified copies of Indictment and Judgment in Cause No. 7139 out of the Criminal Court of Knox County (Exhibits 1 and 2). The Writ of Habeas Corpus addressed to Warden or Deputy Warden Freytag was issued August 12th, 1952, returnable August 20, 1952 (R. 7).

The cause was heard on August 20, 1952, upon the petition and exhibits 1 and 2 filed with the petition (R. 17) and oral testimony of witnesses (Bill of Ex. 1 to 20), and taken under advisement by the Court which handed down its "Memorandum Opinion" (R. 10, 11,12,13,14,15) on September 4, 1952 (R. 17) upon which Judgment was entered October 2, 1952 nunc pro tunc September 4, 1952 (R. 17, 18) dismissing petitioner's action and remanding him to the custody of the Warden of the State Penitentiary at Petros, Tennessee.

56 On September 29, 1952, Petitioner prayed and was granted an appeal and allowed 30 additional days to file bond and perfect his appeal (R. 19) which appeal bond was duly filed on September 30, 1952 (R. 21). On the 30th day of September, 1952, Petitioner prayed and was granted an additional 30 days within which to file his bill of exceptions (R. 20) and have exhibits 1 and 2 certified to the Supreme Court (R. 20) which exhibits were duly authenticated by the Court on October 4, 1952 (Exhibits 1 and 2). On October 6, 1952, Petitioner filed his bill of exceptions (Bill of Ex.

A-1) and the Record was transmitted and filed in the Supreme Court on October 6, 1952.

II

Statement of the Case

Petitioner, William C. Chandler, filed a petition for Writ of Habeas Corpus (R. 1, 2, 3, 4, 5, 6) on the grounds that his arraignment, trial, conviction and judgment of life imprisonment as an Habitual Criminal by the Criminal Court of Knox County, were had in violation of the "law of the land" and "due process of law" under the Constitution and Statutes of Tennessee, and the 14th Amendment to the Constitution of the United States.

Petitioner, an ignorant colored man, was indicted on March 10, 1949 for a $3.00 Housebreaking and Larceny from a business house (Exhibit 1). He was released on bond pending trial (Bill of Ex. 17, 18) and appeared for trial on May 17, 1949 (Exhibit 2) without an attorney (Bill of Ex. 4, 7, 11, 17, 18) without notice of any Habitual Criminal accusation against him (Bill of Ex. 6, 9, 10, 13, 15, 17, 18) until he appeared for trial, and was orally advised that he would also be tried as an Habitual Criminal and in danger of life imprisonment (R. 2; Bill of Ex. 6, 7, 8, 9, 10, 13, 15, 17, 18) upon which he promptly asked for a continuance to enable him to obtain counsel on the Habitual Criminal accusation, which request was denied by the Court (R. 2; Bill of Ex. 7, 9, 17, 18, 19) after which it appeared to General Greenwell that "His brother seemed to be acting as counsel" (Bill of Ex. 18). Petitioner's brother, Rev. James Chandler, is not an attorney (Bill of Ex. 7) but talked with Judge Bibb, and advised the Judge that Petitioner had been hit in
57 the head with an ax when a child (Bill of Ex. 11), and testified on the Habeas Corpus Hearing "As he" (Petitioner) "didn't have any representative the only thing he could do was to plead guilty" (Bill of Ex. 11). As to his plea, Petitioner says he just pleaded guilty to Housebreaking and Larceny (Bill of Ex. 8, 9) and the testimony of juryman J. L. Clancy (Bill of Ex. 8) and witness James Chandler (Bill of Ex. 11) and witness Attorney General Greenwell (Bill of Ex. 17) casts doubt upon the entry of clearly defined and separate pleas of guilty to Housebreaking and Larceny and being an Habitual Criminal as required by statute.

One witness testified to the Housebreaking and Larceny (Bill of Ex. 17) but Petitioner contends that no judgments of alleged prior convictions or other evidence was introduced to the jury on his alleged plea of guilty as an Habitual Criminal (Bill of Ex. 8, 9) and is supported by the testimony of Juryman J. L. Clancy (Bill of Ex. 5, 6) and testimony of James Chandler (Bill of Ex. 11, 12, 13, 14) and testimony of Willie Mae Chandler (Bill of Ex. 15) that

there were no records of prior convictions read to the jury; although General Greenwell recollected to the contrary (Bill of Ex. 17, 19) and it was his impression that Mr. Line or Mr. Cate read them (Bill of Ex. 19).

All of Petitioner's witnesses testified that the Court did not read a written charge to the jury and the jury did not leave the jury box to consider their verdict (Bill of Ex. 4, 5, 8, 11, 12, 15) fully sustained and admitted by testimony of General Greenwell (Bill of Ex. 17, 19, 20) who also stipulated that no written charge was filed with the court records (Bill of Ex. 16).

Attorney General Greenwell testified as follows:

". . . The Judge didn't furnish the Jury with a written charge as he does in cases on trial, but he did explain to them the habitual criminal Act and penalty, as well as housebreaking and larceny, and charged them that if, after hearing his plea of guilty to the two charges, if they agreed to that he was to take three years in house breaking and larceny, and if they
58 agreed to hold up their right hands and if he was guilty (Bill of Ex. 17) as an habitual criminal also to hold up their right hands, and so that was their verdict, he was found guilty of being an habitual criminal and of house breaking and larceny. (Bill of Ex. 18) and on cross-examination, General Greenwell testified as follows:

Q. The jury didn't go out of the box?

A. "I don't think they did."

Q. The court didn't read any written charge?

A. "No, sir."

Q. No written charge whatever as to the housebreaking and larceny, and the habitual criminal.

A. "No, sir, he only told them orally."

Q. Did the Court read the statute, the Habitual Criminal Act?

A. "I am not sure he did that. You might add there is never any written charge where the complainant and defendant come to an agreement.

The Court:

What was that?

A. "The Judge never writes a charge where the State and the defendant have agreed, he generally only makes the statement as to what they have agreed on." (Bill of Ex. 19, 20).

According to witness, Juryman J. L. Clancy "There wasn't any trial," and the whole trial took "Five Minutes" (Bill of Ex. 2) and "Not over 10 minutes", testimony of James Chandler (Bill of Ex.

11) and "About ten minutes" testimony of Willie Mae Chandler (Bill of Ex. 15) and according to Attorney General Greenwell, "If you count the time defendant and his brother talked around about it, I would say 20 or 30 minutes—after we got down to business it probably took about 10 minutes" (Bill of Ex. 19).

Upon these proceedings the jury found petitioner "guilty of housebreaking and larceny as charged and fixed his punishment at 3 years confinement in the State Penitentiary and also find him guilty of being an habitual criminal" (Exhibit 2) and the Court rendered Judgment sentencing him to life imprisonment (Ex-
30 hibit 2). Petitioner recites that upon the hearing, General Greenwell, counsel and only witness for defendant in error, admitted every substantial fact alleged and proved by petitioner, except whether or not any evidence of alleged prior convictions were read to the jury (Bill of Ex. 16, 17, 18, 19, 20).

General Greenwell, for defendant in error, admitted that Petitioner had no pre-trial notice or warning of the Habitual Criminal accusation against him; that petitioner appeared and was put to trial without an attorney, over his objection; that the court did not give a written charge to the jury as required by statute; that the petitioner was summarily tried on the Habitual criminal accusation; that the trial after they got down to business took about 10 minutes; that the jury did not leave the jury box to deliberate on their verdict; that the court just asked the jury to hold up their hands if they agreed that petitioner "was to take three years in house breaking and larceny" and "if he was guilty as an habitual criminal also to hold up their right hands, and so that was their verdict," (Bill of Ex. 16, 17, 18, 19, 20).

The Circuit Court, upon the Habeas Corpus hearing, as evidenced by its "Memorandum Opinion" (R. 10, 11, 12, 13, 14, 15, 16) and judgment thereon (R. 17) held in substance and effect, as follows:

That upon the Habitual Criminal accusation against him, Petitioner was entitled to no pre-trial notice; that the indictment for Housebreaking and Larceny was sufficient notice; that the oral information of the Attorney General upon his appearance for trial violated none of his rights; that Petitioner waived his right to counsel on the Habitual Criminal accusation; that Petitioner knowingly, competently and intelligently pleaded guilty as an Habitual Criminal and by implication that he was adequately qualified to represent himself without benefit of counsel; that the failure of the trial court to give a written charge to the jury as required by statute was immaterial; that the alleged evidence of prior convictions was sufficient; that the oral submission of the case to the jury and their verdict without deliberation and without leaving the jury box on

...ber of grounds violated to constitutional rights of Petitioner that the judgment of life imprisonment aided by the presumption of regularity was valid despite contradiction, ... and uncertainty in the verdict upon which rendered, the authority by which Petitioner was imprisoned for life ...tly shown in the judgment despite the lack of recitals in ... to show petitioner or a reviewing court the alleged prior ...s, their number, grade or sufficiency to sustain the judg... in effect Petitioner had a fair trial consistent with the ...e land" and "due process"—under the Constitution and ...f Tennessee, and the 14th Amendment to the Constitu... United States.

III

Assignment of Errors

No. 1. The Circuit Court erred in not holding that Petitioner entitled to pre-trial notice or warning of the Habitual ...accusation against him.

No. 2. The Circuit Court erred in holding that the in... for Housebreaking and Larceny was sufficient notice to ... of the Habitual Criminal accusation.

No. 3. The Circuit Court erred in holding that the oral ...n of the Habitual Criminal accusation made by the At... eral for the first time, upon Petitioner's arraignment for ..., was sufficient to comply with "due process."

ERROR No. 4. The Circuit Court erred in holding that ...titioner waived his right to counsel on the Habitual Crimi... accusation against him.

ERROR No. 5. The Circuit Court erred in holding that Peti...er's alleged plea of guilty as an Habitual Criminal was in ...wingly competently and intelligently entered in accord ...rocess of law.

No. 6. The Circuit Court erred in not holding the Trial ...ure to give a written charge to the jury, or file its writ... with the papers in the case, constituted an affirmative and ...tion of the statute and denial of due process of law to ...tioner.

ERROR No. 7. The Circuit Court erred in not finding that ...udgments of prior convictions or other evidence of alleged ...r convictions were read or submitted to the jury.

ERROR No. 8. The Circuit Court erred in finding the Judg... of life imprisonment regular, despite contradiction, ...iguity, and uncertainty in the verdict upon the face of the ...gment.

ERROR No. 9. The Circuit Court erred in sustaining as ...

rendered upon the oral information of the Attorney General and a record entirely silent in recitals of alleged prior convictions, their number, grade or sufficiency to show Petitioner or a reviewing court upon what offenses or by what authority his liberty is taken.

72-88 ERROR No. 10. The Circuit Court erred in holding, in substance and in effect, that Petitioner had a fair trial consisting with "due process of law", in spite of the proceeding by oral information, without pre-trial notice and a denial of counsel on the Habitual Criminal accusation, a summary trial with no written charge to the jury, a summary verdict and judgment upon a record completely silent as to offenses upon which the real accusation and Judgment was based.

89-90 ERROR No. 11. The Circuit Court erred in not holding the Judgment void on its face, for the reason that it recites no Habitual Criminal accusation having been made, and there is nothing in the record to support the Habitual Criminal accusation.

BRIEF and ARGUMENT in support of the Assignment of Errors

(Omitted in printing).

91 — [File endorsement omitted]

In the Supreme Court of Tennessee at Knoxville, September Term, 1952

(Transferred to Nashville)

[Title omitted]

REPLY BRIEF FOR DEFENDANT IN ERROR — Filed December 11, 1952

MAY IT PLEASE THE COURT:

Plaintiff in Error, the Petitioner below, appeals from a judgment dismissing his petition for the writ of habeas corpus.

STATEMENT OF THE CASE

On an indictment charging housebreaking and larceny Petitioner was convicted on May 17, 1949, of the offense charged and of being an habitual criminal. He received a three year sentence on the housebreaking and larceny charge and a life sentence for being an habitual criminal.

In his petition he seeks release from so much of this judgment as imposes a life sentence under the Habitual Criminal Act
92 on the ground that the indictment did not charge him with being an habitual criminal and that he never received any

formal written notice that he was to be tried under the Habitual Criminal Act. He avers in the petition that he was first advised that he would be tried as an habitual criminal on May 17, 1949, when he appeared for trial. The petition goes on to allege that he then requested additional time in order to obtain the services of an Attorney but that the Court disallowed this request. He states that he entered a plea of guilty but that this was not done intelligently and with a full understanding of his rights. It is further alleged that on the trial of the case the State offered no proof of prior offenses to bring him within the Habitual Criminal Act and that the Court did not charge the Jury. It is the theory of the petition that the matters charged constituted a denial of Petitioner's rights under the Federal and State Constitutions.

At the hearing Petitioner testified that he was first advised that he was going to be tried as an habitual criminal on the morning of the trial. He requested a delay in order to get an Attorney but this was refused. Petitioner admitted that he was guilty of the housebreaking and larceny charged in the indictment and that he had no defense whatever to that. It seems that Petitioner's brother, who was a preacher, was present at the time of the trial and that he acted as a sort of liaison man between Petitioner and the trial Judge. Petitioner testified that he entered a plea of guilty only to the charge of housebreaking and larceny. Petitioner, his wife, his brother and one of the Jurors testified that there was no evidence of prior convictions offered and that the trial Judge did not read any written charge to the Jury.

Mr. Greenwell, Assistant District Attorney General, testified in behalf of Defendant. His testimony was substantially the
93-96 same as that of Petitioner and his witnesses except that . . . Greenwell testified that Petitioner pleaded guilty to being an habitual criminal and that evidence of three prior convictions was presented to the Jury.

BRIEF and ARGUMENT in support of Reply Brief for Defendant in Error (Omitted in printing).

96 [File endorsement omitted]

In the Supreme Court of Tennessee, at Knoxville

WILLIAM C. CHANDLER

vs.

WARDEN FRETAG

Knox Law

Habeas Corpus

Affirmed and Remanded

JUDGMENT—Filed February 13, 1953

Came the Plaintiff in error William C. Chandler in proper person and by counsel and also came the Attorney General on behalf of the State, and this cause was heard on the transcript of the record from the Circuit Court of Knox County, upon consideration thereof the Court is of opinion there is no error in the judgment of the Court below.

It is, therefore, ordered, adjudged and decreed that the judgment of the lower court be in all things affirmed, that the Petitioner's action will be dismissed, and he will be remanded to custody of the Warden of the State Penitentiary at Petros where he is now legally restrained of his liberty under a valid sentence of life imprisonment.

Costs of the cause will be paid by Sol Leeds and James Chandler, for which let execution issue.

(Signed) A. B. NEIL
PRIDE TOMLINSON
HAMILTON S. BURNETT

97 In the Supreme Court of Tennessee

[File endorsement omitted]

WILLIAM C. CHANDLER,

VS.

WARDEN FRETAG,

Knox Law
Hon. JOHN M. KELLY,
Judge

For Plaintiff-in-Error:
Earl E. Leming,
Knoxville, Tennessee

For the Defendant-in-Error:
Knox Bigham,
Assistant Attorney General

OPINION—Filed April 25, 1953

The trial judge who heard this habeas corpus proceeding was indeed very careful to investigate and hear the evidence pro and con as to whether or not any of the constitutional rights of the plaintiff in error were violated in the cause in which he was convicted and committed to the State Prison. This hearing by the trial judge was conducted in such a way as to disclose all the facts, overlooking in many instances technicalities, so that the facts might be developed. This hearing was in strict compliance with the case of Johnson vs. Zerbst 304 U. S. 458, 58 Sup. Ct. 1019, 82 L. ed. 1461. After hearing this proof the trial judge wrote a very excellent memorandum setting forth his findings which are amply supported by the record. We adopt this opinion as ours.

98 "This is a proceeding in Habeas Corpus. Petitioner Chandler was indicted in Criminal Court of Knox County at the March, 1949 term on a charge of house-breaking and larceny, but he was not indicted as an habitual criminal even though the house-breaking and larency charge was a fourth felony. He made a $1,000.00 appearance bond.

On May 17, 1949, the trial date, defendant appeared but was not represented by counsel other than his brother, a minister of the Gospel. When asked by Criminal Court Judge Bibb what his plea was, Chandler says he replied that he was guilty of house-breaking and larency for which he stood indicted. It was then for the first time, he says, that he was notified that he was also being tried as an habitual criminal, that information having been imparted to him by the judge. When he learned that he was also to be tried for the latter offense, he asked for but was denied a continuance or delay that would permit him to procure the services of counsel to advise him in respect of pleading to the charge of habitual criminal.

He insists the Court denied him his right to counsel on this occasion.

After he entered his plea of guilty to house-breaking and larceny, and while the matter was being submitted to the jury there were no records of any previous convictions of felonies presented to the jury. Assistant Attorney General Greenwell, representing the State at the trial, testified here that it was his best recollection that either Criminal Court Clerk Cate or Deputy Clerk Line read the relator's felony record into the evidence.

99 It is admitted that Judge Bibb gave no written charge to the Jury in respect to either house-breaking and larceny or habitual criminal. Greenwell testified it was Judge Bibb's practice to give no written charge whenever a defendant had agreed to accept the terms of punishment proposed by the Attorney General and for that reason Judge Bibb's charge was oral and contained only a reading of the Statutes, but no written charge otherwise.

When the matter was presented to them by the trial judge the jury did not leave the jury box. The jurymen approved the three years sentence on the defendant's plea of house-breaking and larceny and at the same time found the defendant guilty of being an habitual criminal. Upon such verdict of the jury the Criminal Judge pronounced this judgment and sentence, reading in part:

> 'Came the Attorney General for the State, also the defendant in custody, having counsel present, and on hearing the indictment read the plea thereto, defendant says *that he is guilty* of house-breaking and larceny and also *that he is guilty* of being an habitual criminal. Thereupon came the following jury, to-wit: .....
> sworn to well and truly ascertain and fix the punishment of the defendant. Having heard the proof in this cause, and charge of the Court upon their oaths the jurors say: They find the defendant guilty of house-breaking and larceny as charged and fix his punishment at 3 years confinement in the penitentiary and also find him guilty of being an habitual criminal. It is therefore the judgment of the court, upon the verdict of the jury, that the defendant for the offense of which he stands convicted, shall be committed as an habitual criminal
> 100 to the State Penitentiary for the remainder of his natural life, as provided in Section 11863.2 of the Code, and shall pay all the costs of this prosecution for which execution may issue. The clerk of this Court will make out and furnish to the Warden of the Penitentiary transcript of the judgment of the Court in this cause at his earliest convenience.

Defendant was taken at once to the State Penitentiary. There was no appeal. Three years have passed since the date of the judg-

ment and the defendant now claims that by serving a sentence of three years for house-breaking and larceny he has served all the sentence he is legally liable for and cannot be imprisoned any longer.

In this proceeding for Habeas Corpus relator claims a denial of due process. The violation of the Constitutional right of which he complains arises out of an alleged invalid and illegal sentence as an habitual criminal. He declares he was never indicted as an habitual criminal; was never notified he was to be tried as such; has had no hearing on that charge; that no evidence of previous felony convictions to sustain such charge ever was presented to the jury which found him guilty of that charge and fixed his punishment at life imprisonment; also that the jury received no written charge of the law from the Court as required by the Statutes of the State; that for such reasons the jury's verdict and the judgment of the Court and the sentence as pronounced by the Court on the verdict was invalid and illegal.

In order for the jury to find that the defendant is an habitual criminal it is not necessary that he be so charged in the indictment, which charges him with a fourth felony. *Brown vs. State, 186 Tenn., 378 (390); McCummings vs. State 175 Tenn. 304.* Section 5 of the Act provides that an indictment may or may
101 not charge a defendant with being an habitual criminal but it is no violation of one's rights if the indictment contains no such notice to the accused. In this case Chandler was not indicted as an habitual criminal and did not have to be and no right of his was violated because he was not indicted.

Where an accused has a record of three previous convictions and is indicted for a felony which, if he should be convicted of it, would constitute a fourth offense and make him liable to be sentenced as an habitual criminal, even then the charge of being an habitual criminal would not be an integral part of the offense for which an accused would be indicted. In this case the charge of being an habitual criminal would not be an integral part of the offense of house-breaking and larceny. Being an habitual criminal is not made an independent offense. Chandler was not entitled to notice in writing of the charge of being an habitual criminal when such is not under the law an independent offense. All the notice Chandler was entitled to receive was the notice by the indictment for house-breaking and larceny.

As to being entitled to have counsel, he would be entitled to have counsel on the charge for which he stood indicted, namely, house-breaking and larceny, but he would not necessarily be entitled to notice that he would be tried on the offense of habitual criminal since the Statute is itself notice to an accused who is being tried for his fourth felony. It appears to the Court in very strong circumstances that Chandler waived his right to counsel. To quote his

own testimony, he said that he had no attorney to defend him on the charge of house-breaking and larceny because, 'knowing that I was guilty and I was going to plead guilty', he considered it useless to employ counsel.

The relator contended that there was no evidence submitted to the jury upon which a conviction could have been sus-
102 tained. There was proof by the Attorney General that some evidence consisting of the testimony of Mr. Sutton, owner of the stolen property and others, was put on so that the jury might have some evidence that Code Section 7174 requires to be heard on a plea of guilt of a felony. Such position was upheld by the State in *Knowles vs. State, 155 Tenn. 181*. Greenwell testified that the relator admitted his previous three convictions on May 17, in the Criminal Court; also, that he was advised by Judge Bibb that he was being tried as an habitual criminal.

The minutes containing the judgment in this case show that Chandler pleaded guilty to house-breaking and larceny. Of that charge he had notice by the indictment. Of that charge he was guilty and readily admitted his guilt. On the habitual criminal part of his case and of his guilt, it was made to appear at the trial to the Judge and to the jury that Chandler had a record of crime (three previous convictions of felony) which brought him within the terms of the habitual criminal act. With the record as it is, it could not have been other and there is the presumption of regularity.

At no place in his petition for Habeas Corpus has defendant Chandler denied the three previous convictions of felonies that made him subject to punishment as an habitual criminal. The record is clear that the evidence of convictions was before the Criminal Judge when he submitted the habitual criminal issue to the jury. Had Chandler not been convicted of felonies on three previous occasions, he should have made such issue in the Criminal Court at the time of his trial for a fourth felony, but he raised no challenge of erroneous identification. He does not deny he is the person alleged to have been previously convicted. Even now, he asks for no oppor-
103 tunity to deny the earlier convictions nor does he contend that those convictions were of a character that would take him out from under the act rather than make him subject to its terms.

In a case very much in fact like the present one, *State ex rel Grandstaff vs. Gore, 182 Tenn. 94*, Justice Chambliss wrote the opinion in that case and had this to say concerning the verdict of a jury finding an accused guilty of house-breaking and larceny:

> 'The judgment below as was shown by the minutes not only properly adjudged him guilty of the offense of house-breaking and larceny, but as required by the terms of the act, fixed his

punishment therefor at life imprisonment. Being an habitual criminal is not made an independent offense. The act provides only that if, upon conviction of a felonious offense, it is made to appear that the accused has a record of crime which brings him within the terms of the act, then his punishment for the offense for which he is then tried shall be life imprisonment.'

The Grandstaff case supra cites with approval two earlier cases, namely, *McCummings vs. State, 175 Tenn. 309; Tipton vs. State, 160 Tenn. 664.*

A person cannot be indicted for being an habitual criminal. There is no such independent offense under the law. If such a charge is contained in an indictment it is mere surplusage. It is not an integral part of a felony. The only notice that one charged with a fourth felony will be held to account as an habitual criminal is the Statute itself. If a defendant facing the possibilty of life imprisonment as a habitual criminal should make an issue of previous convictions, either his own individual connection therewith, or the kind and character of the offense he would be entitled to reasonable opportunity to prepare his defense, but where there is no issue
104 on the previous convictions then he would not be entitled to such opportunity. Judge Chambliss has pointed out in the Grandstaff case that where it is made to appear that one has a record of three previous felony convictions and the accused is found guilty of a fourth felony, then the only thing that can be done is to sentence the guilty fourth offender to life imprisonment. The habitual criminal act is one which imposes greater punishment for those convicted previously of three felonies.

The conclusion of the Court in this case must be that the accused, Chandler, was validly indicted. He was not denied any right to counsel because he had waived the right to counsel under the one thing that he could have been tried for and that was the crime of house-breaking and larceny. He was not entitled to any other notice in this case of a charge of habitual criminal except the Statute itself." Petitioner's action will be dismissed, and he will be remanded to custody of the Warden of the State Penitentiary at Petros where he is now legally restrained of his liberty under a valid sentence of life imprisonment."

It results that the judgment below must be sustained at the cost of the petitioner.

(S.) HAMILTON S. BURNETT.

105 In the Supreme Court at Knoxville, Tennessee

[File endorsement omitted]

[Title omitted]

ORDER EXTENDING TIME FOR FILING PETITION TO REHEAR—Filed Feb. 16, 1953

Upon the timely application of Plaintiff in Error it is ordered that he be allowed and have an additional 20 days within which to prepare and file his Petition for a Rehearing before the Supreme Court in the above styled cause.

This the day of February, 1953.

(S.) HAMILTON S. BURNETT,
Judge

106 In the Supreme Court at Knoxville, Tennessee

[File endorsement omitted]

[Title omitted]

PETITION FOR REHEARING—Filed March 6, 1953

MAY IT PLEASE THE COURT:

Comes the Plaintiff in Error, Habeas Corpus Petitioner, William C. Chandler, hereinafter called Petitioner, in the above styled cause, and says that he is much aggrieved by the opinion of this Honorable Court, handed down on the 6th day of February, 1953, and respectfully prays a rehearing of said cause, for reasons as follow:

1. Petitioner suggests that this Honorable Court overlooked and failed to determine or adjudicate Petitioners constitutional rights under the 14th Amendment to the Constitution of the United States, violations of which he asserted in his petition (R. 4, 5) and relied upon in his appeal.

Petitioner asserts that in addition to State statutory and constitutional grounds, his eleven assignments of error squarely presented federal questions under the "due process of law" clause of the 14th Amendment to the Constitution of the United States.

Assignments of error numbers 1, 2, 3, 4, 5, and 10 are supported by specific brief citations of the 14th Amendment to the Constitution of the United States, and error number 10, supported by appropriate citations, substantially summarized the composite violations asserted in his ten other assignments of error, all of petitioner's

said rights being within the protection of the 14th Amendment under the "due process of law" clause.

107 2. Petitioner further suggests that the Court may have been misled by the erronous assertion on page 2 of the State Attorney General's brief, as follows:

> "The first, second, third, ninth, tenth and eleventh assignments raise the *single* insistence that the judgment of conviction is void because of the failure of the indictment to include the charge that petitioner was an habitual criminal." (Emphasis supplied)

Assignments of error numbers 1, 2 and 3, complain of a denial of pre-trial notice to petitioner of the habitual criminal accusation, and not of failure to include the accusation in the indictment, except upon the grounds that he was entitled to some form of notice in the indictment or otherwise.

Assignment of error No. 9, does not complain of failure of the indictment to charge that petitioner was an habitual criminal, but complains of a judgment upon an oral information, and a record insufficient in recitals to show petitioner or a reviewing court of what prior offenses he was accused, or by what authority he is imprisoned for life. Also, assignments of error 10 and 11 do not contend that failure to indict petitioner as an habitual criminal violated his rights, under decisions of this court, but it is contended he was entitled to pre-trial notice of the accusation, and a clear and unambiguous judgment based on sufficient record recitals to show by what authority he is held.

3. Petitioner suggests that this Honorable Court must have overlooked assigned error no. 4 in holding that petitioner waived his right to counsel on the habitual criminal accusation, in view of Attorney General Greenwell's admission (Bill of Ex. 16, 17, 18, 19) that petitioner asked for counsel or time to get counsel as soon as he was advised that he would be tried as an habitual criminal. How can waiver of his right to counsel be assumed in the face of the uncontroverted evidence that he asked for opportunity to obtain counsel as soon as he was advised of the habitual criminal

108 accusation.

4. Petitioner respectfully shows to this honorable court that the following sentence "Greenwell testified it was Judge Bibb's practice to give no written charge whenever a defendant had agreed to accept the terms of punishment proposed by the Attorney General and for that reason Judge Bibb's charge was oral and *contained only a reading of the statutes*, but no written charge otherwise." (Opinion page 3), is contrary to the evidence in the record in so far as it indicates a reading of the statutes.

The testimony of General Greenwell (Bill of Ex. 19) on this issue is as follows:

"Q. The Court didn't read any written charge?
A. No, sir.
Q. No written charge whatever as to the house breaking and larceny, and the habitual criminal.
A. No, sir, he only told them orally.
Q. Did the Court read the statute, the Habitual Criminal Act?
A. I am not sure he did that.—You might add there is never any written charge where the complainant and defendant come to an agreement."

5. Petitioner complains, respectfully, of the following statement (Opinion, Page 6): "At no place in his petition for Habeas Corpus has defendant Chandler denied the three previous convictions of felonies that made him subject to punishment as an habitual criminal." and (Opinion Page 6, 7) Even now, he asks for no opportunity to deny the earlier convictions nor does he contend that those convictions were of a character that would take him out from under the act rather than make him subject to its terms."

To this Petitioner says that guilt or innocence is not at issue in a Habeas Corpus proceeding, and further that from the record petitioner could not determine the prior offenses of which he was accused. If the State knew in fact what prior offenses were used it had adequate opportunity to present such evidence upon the habeas corpus hearing. Petitioner's petition was drawn on the theory of deprivation of procedural guaranties under due process protected by the 14th Amendment to the Constitution of the U. S.

109 6. Petitioner further respectfully shows to this Honorable Court that the Legislature of Tennessee has shown its disapproval of lack of notice to an accused under the habitual criminal act as disclosed by the 1950 Supplement to the Code of Tennessee, Section 11863.5, as follows:

"11863.5. Indictment to charge habitual criminality.—An indictment or presentment which charges a person, who is an habitual criminal as defined in this chapter, with the commission of any felony specified in sections 10777, 10778, 10788, 10790, 10797, or 11762 of the code, or a crime for which the maximum punishment is death, shall, in order to sustain a conviction of habitual criminality, also charge that he is such habitual criminal. Every person so charged as being an habitual criminal shall be entitled, upon his motion therefor filed in the cause at any time prior to trial, to demand and to have from the state, a written statement of the felonies, prior convictions of which form the basis of the charge of habitual

criminality, setting forth the nature of each such felony and the time and place of each such prior conviction. He shall not, without his consent, be required to go to trial within twenty days from and after the time when such statement was supplied to him or his counsel of record. (1939, Ch. 22, sec. 5, modified.)"

Thus the legislature has published its idea of "due process of law" under the Habitual Criminal Act, after this court sustained convictions under habitual criminal accusations not included in the indictment. Petitioner recognizes that this statute was modified after his conviction, but it still evidences the sacredness of formal pleading and notice to the accused.

Petitioner, therefore, respectfully and earnestly prays that this Honorable Court will grant him a rehearing of this case to the end that the judgment and opinion announced on the 6th day of February, 1953, and petitioner's imprisonment for life under the judgment of 1949 be declared invalid. Further, that this Honorable Court particularly consider and rule upon the Federal Questions raised by petitioner under the 14th Amendment and United States Supreme Court decisions cited in his brief.

(S.) EARL E. LEMING,
Atty. for Petitioner,
508 Empire Bldg.,
Knoxville, Tennessee.

Certificate of Service omitted in printing.

110 In the Supreme Court of Tennessee, at Knoxville

[Title omitted]

REPLY TO PETITION TO REHEAR—March 9, 1953

MAY IT PLEASE THE COURT:

In his petition to rehear Plaintiff in Error urges that this Court overlooked certain questions as to procedural due process under the 14th amendment to the Federal Constitution. It is first insisted that he was denied his constitutional rights because he failed to receive adequate notice that he was to be tried as an habitual criminal. In the memorandum of the trial Court, which was adopted as the opinion of this Court, it was specifically held that he was not entitled to any notice that he would be prosecuted as an habitual criminal other than the indictment for housebreaking and larceny, since the statute itself is notice to an accused who is being tried for his fourth felony.

111 It is again insisted that Plaintiff in Error was unlawfully deprived of his right to Counsel. In the Court's opinion it was specifically held that he waived his right to Counsel.

The next complaint is that the criminal Judge's charge to the Jury was oral and not in writing. In its opinion the Court states that it was admitted that Judge Bibb gave no written charge to the Jury. This matter was therefore not overlooked but was fully considered and it was held on the entire record that Plaintiff in Error's conviction was valid. The effect of the Court's opinion is therefore to hold that the failure to give a written charge is not such an error as entitles Plaintiff in Error to relief on the writ of habeas corpus.

We deem it not amiss to quote the following from the case of Railroad v. Fidelity & Guaranty Company, 125 Tenn., 658, at Page 691:

> "A petition for rehearing should never be used merely for the purpose of rearguing the case on points already considered and determined, unless some new and decisive authority has been discovered, which was overlooked by the court. The office of a petition to rehear is to call the attention of the court to matters overlooked, not to those things which the counsel supposes were improperly decided after full consideration."

Respectfully submitted,

(S.) KNOX BIGHAM
Assistant Attorney General.

KB:mws
3-9-53

112 [File endorsement omitted]

In the Supreme Court of the State of Tennessee

WILLIAM C. CHANDLER

vs.

WARDEN FRETAG

Knox Law, Hon. John M. Kelly, Judge.

OPINION ON PETITION TO REHEAR—Filed April 25, 1953

The plaintiff in error through his counsel has filed a courteous, dignified and forceful petition to rehear. It is urged that we overlooked certain questions as to procedural due process under the Fourteenth Amendment to the Federal Constitution. Under this insistence it is said that the plaintiff in error was denied his constitu-

tional rights because he failed to receive adequate notice that he was to be tried as an habitual criminal. We deemed it proper to adopt the memorandum of the trial judge in this case because we felt that this opinion fully covered all questions raised. That opinion specifically held that the plaintiff in error was not entitled to notice that he would be prosecuted as an habitual criminal other than the indictment for housebreaking and larceny, since the statute itself is notice to an accused who is being tried for his fourth felony.

Again the plaintiff in error insists that he was unlawfully
113 deprived of his right to counsel. We fully considered this matter and think that the trial judge's memorandum opinion, which we adopted, fully covers the question wherein it was held that the plaintiff in error had waived his right to counsel.

The next insistence is that the judge trying this habeas corpus petition failed to consider the fact that the criminal judge's charge to the jury was oral and not in writing and therefore this petitioner's rights had been violated. In the opinion of the trial court which we adopted it was admitted that the criminal judge gave no written charge to the jury. We therefore did not overlook this matter but fully considered it and held that under the entire record the plaintiff in error's conviction was valid. The effect of the opinion of course is therefore to hold that the failure to give a written charge is not an error as entitled the plaintiff in error to relief on a writ of habeas corpus. We now specifically so hold.

We have very carefully considered the petition to rehear as we did the matters originally and can find no error therein. For the reasons stated the petition to rehear must be denied.

(Signed) HAMILTON S. BURNETT,
Judge.

114 In the Supreme Court of Tennessee, at Knoxville, September Term, 1952

[Title omitted]

ORDER DENYING PETITION TO REHEAR—April 27, 1953

This cause came on to be further heard on the Petition to Rehear and Reply thereto from a consideration of all of which the Court is of opinion said Petition to Rehear is not well taken and should be denied.

It is therefore ordered and decreed by the Court that the Petition to Rehear is denied.

Costs of petition to rehear will be paid by Sol Leeds and James Chandler, for which let execution issue.

115-116 PRAECIPE (Omitted in Printing)

117 Clerk's Certificate to foregoing transcript omitted in printing.

118-119 Supreme Court of the United States, October Term, 1953

No. —

WILLIAM C. CHANDLER, Petitioner,

vs.

WARDEN FRETAG

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI — July 24, 1953.

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Sept. 24, 1953.

TOM C. CLARK,
Associate Justice of the Supreme Court of the United States.

Dated this Twenty-fourth day of July, 1953.

120 In Supreme Court of the United States

[Title omitted]

STIPULATION AS TO THE PRINTING OF THE RECORD — Filed May 28, 1954

Pursuant to the suggestion in your letter of May 10, 1954, we have stipulated with opposing counsel regarding portions of the certified record from the Supreme Court of Tennessee which might be omitted from the printed record in the Supreme Court of the United States, as immaterial to the issues raised. This stipulation is jointly prepared as evidenced by our respective signatures below.

All citations herein are to the left hand lower corner side paging of the Certified Record from the Supreme Court of Tennessee, indicated thusly (R. —).

1. Omit: Letter dated August 12th, 1952 from Rhoten Byington to the Hon. Roy H. Beeler, Attorney General, (R. 9).

2. Omit: Term Caption; Minutes of Circuit Court of Knox County, (R. 10).

3. The "Memorandum Opinion" of the Trial Court, John M. Kelly, Judge (R. 11, 12, 13, 14, 15, 16, 17) may be omitted at the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 39

WILLIAM C. CHANDLER,

Petitioner,

vs.

WARDEN FRETAG

BRIEF ON MERITS FOR AND IN BEHALF OF

WILLIAM C. CHANDLER, PETITIONER

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 39

WILLIAM C. CHANDLER,

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vs.

WARDEN FRETAG

BRIEF ON MERITS

Opinions Below

(a) Petitioner, William C. Chandler, here seeks review of a judgment of the Supreme Court of Tennessee (R. 31) and its unpublished "Opinion" thereon (R. 32 to 36) and it unpublished "Opinion On Petition To Rehear" (R. 41, 42) and final "Order Denying Petition To Rehear" (R. 42) denying him relief by habeas corpus from a judgment and sentence of life imprisonment as an habitual criminal (Pl. Ex. 2, R. 7, 10, 12) challenged as being in conflict with the due process clause of the 14th Amendment to the Constitution of the United States.

Jurisdiction

(b) The certiorari jurisdiction of this Honorable Supreme Court of the United States is invoked to review the judgment (R. 31) and "Opinion" thereon (R. 32 to 36) and

"Opinion On Petition To Rehear" (R. 41, 42) and final "Order Denying Petition To Rehear" (R. 42) of the Supreme Court of Tennessee, the highest Court in the State. (Const. of Tenn., Art. 6, Secs. 1 and 2) by reason of Title 28 U. S. C. A., Sec. 1257, Par. (3), providing review by certiorari of final judgments or decrees rendered by the highest court of a state where any title, right, privilege or immunity is specially set up or claimed under the Constitution of the United States. Petitioner claims that he was denied procedural due process under the 14th Amendment to the Constitution of the United States, on the grounds that he had no pre-trial notice of the habitual criminal accusation against him; that he was first orally advised of the habitual criminal accusation when he appeared for trial on a housebreaking and larceny indictment carrying a sentence of from 3 to 10 years; that when advised of the oral habitual criminal accusation he demanded counsel which was refused by the court; that the judgment is ambiguous and contradictory; that the trial record fails to show the alleged prior convictions required to sustain his conviction as an habitual criminal, and that the trial record is insufficient to show petitioner or a reviewing court by what authority he is imprisoned under a life sentence; that the recital in the judgment that he appeared with counsel is false.

The Supreme Court of Tennesse entered its final "Order Denying Petition To Rehear" (R. 42) on April 27, 1953, and within 90 days thereafter, Petitioner obtained from the Honorable Associate Justice, Tom C. Clark, an "Order Extending Time To File Petition For Writ Of Certiorari" to and including September 24, 1953 (R. 43). Petitioner filed his Petition For Writ of Certiorari on September 23, 1953, and the Writ of Certiorari to the Supreme Court of the State of Tennessee was granted April 5, 1954.

Constitutional and Statutory Provisions Involved

(c) Here, directly involved, is the due process clause of the 14th Amendment to the Constitution of the United States (Appendix A); and the Habitual Criminal Act of Tennessee, Pub. Acts of Tenn., 1939, Ch. 22, Secs. 1 to 8; Williams Code of Tennessee, Supp. Secs. 11863.1 to 11863.8 (Appendix B).

Questions Presented For Review

(d) The substantial federal questions presented for review originated by Petition For Habeas Corpus (R. 1 to 5) with copy of indictment and judgment thereon annexed as exhibits (Pl. Ex. 1, 2; R. 5, 6, 7, 8) filed in the Circuit Court of Knox County, Tennessee, preserved upon appeal to the Supreme Court of Tennessee by eleven Assignments of Error (R. 28, 29), summarized and stated in the Petition For Writ Of Certiorari, in questions as follow:

1. Whether under the 14th Amendment Petitioner was entitled to pre-trial pleaded notice, or warning, of the habitual criminal accusation against him?

2. Whether the Tennessee Supreme Court's holding that Petitioner "was not entitled to notice that he would be prosecuted as an habitual criminal other than the indictment for housebreaking and larceny", can stand under procedural due process provisions of the 14th Amendment?

3. Whether the State Court's holding that Petitioner "*was not entitled to notice that he would be prosecuted as an habitual criminal other than the indictment for housebreaking and larceny, since the statute itself is notice to an accused who is being tried for his fourth felony*", presumes guilt without fair notice or fair trial, in violation of **"due process" under the 14th Amendment?**

4. Whether Petitioner was denied "due process" under the 14th Amendment by the State Court's holding that he

waived his right to counsel on the habitual criminal accusation, by appearing without counsel upon the housebreaking and larceny indictment, despite the State's admission that he had no pre-trial notice of such accusation, and that he requested and was denied opportunity to obtain counsel on such accusation, when first advised by the Court of the accusation?

5. Whether an oral habitual criminal accusation, made for the first time, when Petitioner appeared for trial without counsel on a housebreaking and larceny, his request for, and denial of opportunity to obtain counsel on such accusation, a summary trial thereon and a sentence to life imprisonment as an habitual criminal is violative of procedural due process under the 14th Amendment?

6. Whether under the "due process clause" of the 14th Amendment the State Court erred in sustaining as valid, the judgment of life imprisonment as an habitual criminal, rendered on an oral information in circumvention of the grand jury, ambiguous and contradictory on its face, the judgment and trial record being completely silent in recitals of prior felony convictions, the Court where rendered, their number, grade or sufficiency to show Petitioner or a reviewing court upon what offenses or by what authority his liberty is taken?

7. Whether under the facts of this case Petitioner was denied a fair trial consistent with procedural due process of law under the 14th Amendment to the Constitution of the United States?

Statement of the Case

(e) Petitioner, William C. Chandler, in the Circuit Court of Knox County, Tennessee, filed a Petition for Writ of Habeas Corpus (R. 1 to 5) with certified copies of the indictment and challenged judgment annexed as exhibits (R. 5,

6, 7,) on the ground that his trial, conviction, judgment and sentence to life imprisonment as an habitual criminal in the Criminal Court of Knox County, Tennessee, was had in violation of the "law of the land" under the Constitution and Statutes of Tennessee, and in violation of "procedural due process of law" under the 14th Amendment to the Constitution of the United States.

The Habitual Criminal Act (Pub. Acts of Tenn. 1929, Ch. 22, Secs. 1 to 8; Williams Tenn. Code, Supp. Secs. 11863.1 to 11863.8) hereto shown in (Appendix "B"), provides in substance that one on trial for a fourth felony, who has previously been convicted on different occasions of three certain designated felonies, above the grade of petit larceny, two of which rendered him infamous, may, without being indicted as an habitual criminal, be orally accused, tried, convicted and sentenced to life imprisonment as an habitual criminal. Judgments of such prior convictions from this State, any other State, country or territory in the same name as the accused is made prima facie evidence that such accused is one and the same person. Under Section 4 of the Act, the grand jury may indict one as an habitual criminal, but if the grand jury fails to indict an alleged fourth offender as an habitual criminal, the State may orally accuse, try and convict such accused as an habitual criminal.

Petitioner, an ignorant colored man, was indicted on March 10, 1949 for a $3.00 housebreaking and larceny from a business house (Pl. Ex. 1; R. 1, 5, 6, 10) carrying a sentence of from 3 to 10 years. He was not indicted as an habitual criminal. He was released on a $1,000 bond pending trial (R. 21), and appeared for trial on May 17, 1949 (Pl. Ex. 2, R. 7, 10, 11, 21) without an attorney (R. 13, 14, 15, 17, 21, 22) intending to plead guilty to the housebreaking and larceny indictment (R. 2, 14). He had no notice of the habitual criminal accusation against him (R. 14, 15, 16, 17,

ments of prior convictions or other evidence was presented to the jury on the oral habitual criminal accusation, as required by Tenn. Code Sec. 11738 (Appendix "C") and held in *Knowles* v. *State*, 155 Tenn. 181 upon a plea of guilty; although Prosecuting Attorney General Greenwell, the State's only witness on the hearing, instead of producing the supposed prior judgments of conviction recollected to the contrary "testifying wholly from memory" (R. 21, 22) and it was his impression Mr. Line or Mr. Cate (Criminal Court Clerks) read them (R. 21, 22).

The Trial Court record consisting of the housebreaking and larceny indictment (Pl. Ex. 1, R. 5, 10) and judgment No. 7139 (Pl. Ex. 2, R. 7, 11, 12) contains no recital of prior judgments of conviction. Except for the testimony of Attorney General Greenwell (R. 21, 22, 23) the State relied entirely upon the presumption of regularity of judgments, despite the fact that the Habeas Corpus Petition alleged no prior judgments were submitted to the jury (R. 2, Par. 6).

All of Petitioner's witnesses testified that the Court did not read a written charge to the jury, as provided by Tenn. Code Secs. 11749, 11750, 11751 (Appendix "D"), and that the jury did not leave the jury box to consider their verdict (R. 13, 15, 16, 18, 20) fully sustained and admitted by the only state witness, Attorney General Greenwell (R. 21, 22, 23), who also stipulated that no written charge was filed with the Court papers (R. 21) as required by Tenn. Code Sec. 11749 (Appendix "D"), and he was not sure the Court read the Habitual Criminal Act (R. 23) and stated "The Judge never writes a charge where the State and the defendant have agreed, he generally only makes the statement as to what they have agreed on" (R. 23).

All witnesses upon the habeas corpus hearing agreed that the trial proceedings took from 5 to 10 minutes (R. 11, 18,

20) although Attorney General Greenwell testified "If you count the time defendant and his brother talked around about it, I would say 20 or 30 minutes—after we got down to business it probably took about 10 minutes" (R. 22).

The Supreme Court of Tennessee specifically held that Petitioner "was not entitled to notice that he would be prosecuted as an habitual criminal other than the indictment for housebreaking and larceny, since the statute itself is notice to an accused who is being tried for his fourth felony." (R. 34, 36, 42) and further held that Petitioner "waived his right to counsel" (R. 34) despite Prosecuting Attorney General Greenwell's testimony, as follows:

> "William Chandler was indicted by the grand jury on or about March 10, 1949, at that time he was out on bond. The East Tennessee Bonding Company had made bond for $1,000.00 on housebreaking and larceny. He was duly indicted on March 10th and thereafter the case was set for hearing on May 17, 1949. The case came up on the Docket, as I recall—I am testifying wholly from memory—he said he wanted the case put off *as he was advised by the Court that he was being tried as an habitual criminal in addition to housebreaking and larceny. He asked that the case be put off so he could get a lawyer* and Judge Bibb told him he had had since January up to May to get a lawyer. *Judge Bibb has a set rule that he does not appoint counsel for any defendant that is able to make bond.* He says that if they are able to hire a bondsman, they are able to get a lawyer, and he does not appoint one." (R. 21) (Emphasis Supplied)

The State Admits: That Petitioner was not indicted as an habitual criminal; that he had no written notice of the habitual criminal accusation; that he had no notice of the oral habitual criminal accusation until he appeared in Court for trial on the 3 to 10 year indictment for housebreaking and larceny; that when first advised of the habitual criminal

accusation he promptly requested and was denied opportunity to obtain counsel on such charge; that he was summarily put to trial upon the oral habitual criminal accusation without an attorney; that the judgment recital that he appeared with counsel is false; that the court did not give a written charge to the jury, nor file a written charge with the papers in the case pursuant to statute; that the trial proceedings lasted from 5 to 10 minutes; that the court did not read the habitual criminal act to the jury (R. 21, 22, 23).

In the Statement Of The Case (R. 29, 30) Counsel for Warden Fretag sums up the evidence as follows:

> "Mr. Greenwell, Assistant District Attorney General, testified in behalf of Defendent. His testimony was substantially the same as that of Petitioner and his witnesses except that Greenwell testified that Petitioner pleaded guilty to being an habitual criminal and that evidence of three prior convictions was presented to the Jury." (R. 30)

Petitioner submits that the trial court not only denied him counsel and forced him to trial on the oral habitual criminal accusation but directed the jury to return a contradictory and ambiguous verdict of guilty, upon which the Court imposed the sentence of life imprisonment, as shown by testimony of Attorney General Greenwell, as follows:

> "The Judge didn't furnish the Jury with a written charge as he does in cases on trial, but he did explain to them the habitual criminal Act and penalty, as well as house breaking and larceny, and charged them that if, after hearing his plea of guilty to the two charges, if they agreed to that he was to take three years in house-breaking and larceny, and if they agreed to hold up their right hands; and if he was guilty as an habitual criminal also to hold up their right hands, and so that was their verdict, he was found guilty of being an

habitual criminal and of housebreaking and larceny." (R. 21, 22)

Under such directions the challenged judgment (Pl. Ex. 2, R. 7, 10, 12) discloses that the jury fixed petitioner's sentence on the housebreaking and larceny at 3 years, the minimum for such charge, and under the recital that they found him guilty as an habitual criminal, the court sentenced him to life imprisonment.

Law and Authorities

(1) Petitioner was entitled to pre-trial pleaded notice of the habitual criminal accusation against him. *Cole, et al* v. *State of Arkansas*, 333 U. S. 196, 68 S. Ct. 514; *Powell* v. *Alabama*, 287 U. S. 45, 53 S. Ct. 55, 77 L. Ed. 158, 84 ALR 527.

Petitioner was entitled to fair notice of the real accusation against him. In Re *Oliver*, 333 U. S. 257; *Smith* v. *O'Grady*, 312 U. S. 329, 61 S. Ct. 572, 85 L. Ed. 859; *Hauck* v. *Olson*, 326 U. S. 271, 66 S. Ct. 116.

Petitioner was entitled to counsel on the habitual criminal accusation against him. *Uveges* v. *Commonwealth of Pennsylvania*, 335 U. S. 437, 69 S. Ct. 184, 93 L. Ed. 127; *Gibbs* v. *Burke*, 337 U. S. 773, 69 S. Ct. 1247, 93 L. Ed. 1686, Annotated; even on a plea of guilty, *Von Moltke* v. *Gillies*, 332 U. S. 708, 68 S. Ct. 316, 92 L. Ed. 316; *De Meerleer* v. *Michigan*, 329 U. S. 663, 67 S. Ct. 596, 91 L. Ed. 584; *Rice* v. *Olson* 324 U. S. 786, 65 S. Ct. 989, 89 L. Ed. 1367, Anno. 20 ALR 2d 1346; *Hauck* v. *Olson*, 326 U. S. 271, 66 S. Ct. 116; *White* v. *Ragen*, 324 U. S. 760, 65 S. Ct. 978; *Hawk* v. *Mayo*, 324 U. S. 42, 65 S. Ct. 517, 89 L. Ed. 739; *Tompkins* v. *Missouri*, 323 U. S. 485, 65 S. Ct. 370; *Williams* v. *Kaiser*, 323 U. S. 471, 65 S. Ct. 363; *Smith* v. *O'Grady*, 312 U. S. 329, 61 S. Ct. 572, 85 L. Ed. 859.

Petitioner was entitled to a trial record sufficient in re-

cital of prior convictions, the court where rendered, their number, grade and sufficiency to show Petitioner or a reviewing court upon what offenses or by what authority his liberty is taken. *Commonwealth ex Rel Arnold* v. *Ashe*, (1945) 156 Pa. Super 451, 40 A 2d 875.

Under the facts of this case, Petitioner was tried, convicted and sentenced to life imprisonment as an habitual criminal in a trial proceeding lacking in fundamental fairness, and contrary to procedural due process under the 14th Amendment to the Constitution of the United States, as announced in cases as follow:

Cole, et al v. *State of Arkansas*, 333 U. S. 196, 68 S. Ct. 514; In Re *Oliver*, 333 U. S. 257, 68 S. Ct. 499; *Gibbs* v. *Burke*, 337 U. S. 773, 93 L. Ed. 1686, 69 S. Ct. 1247; *Uveges* v. *Commonwealth of Pennsylvania*, 335 U. S. 437, 93 L. Ed. 127, 69 S. Ct. 184; *Bute* v. *People of Illinois*, 333 U. S. 640, 68 S. Ct. 763; *Von Moltke* v. *Gillis*, 332 U. S. 708, 92 L. Ed. 316, 68 S. Ct. 316; *De Meerleer* v. *Michigan*, 329 U. S. 663, 91 L. Ed. 584, 67 S. Ct. 596; *Hawk* v. *Olson*, 326 U. S. 271, 66 S. Ct. 116; *Rice* v. *Olson*, 324 U. S. 786, 89 L. Ed. 1367, 65 S. Ct. 989; *House* v. *Mago*, 324 U. S. 42, 89 L. Ed. 739, 65 S. Ct. 517; *White* v. *Ragen*, 324 U. S. 760, 65 S. Ct. 978; *Tomkins* v. *Missouri*, 323 U. S. 485, 65 S. Ct. 370; *Williams* v. *Kaiser*, 323 U. S. 471, 65 S. Ct. 363; *Weiler* v. *United States*, 323 U. S. 606, 65 S. Ct. 548, 89 L. Ed. 495, 156 A. L. R. 496; *Betts* v. *Brady*, 316 U. S. 455, 62 S. Ct. 1252; *Smith* v. *O'Grady*, 312 U. S. 329, 61 S. Ct. 572, 85 L. Ed. 859; *Glasser* v. *United States*, 315 U. S. 60, 62 S. Ct. 457, 86 L. Ed. 680; *Johnson* v. *Zerbst*, 304 U. S. 485, 58 S. Ct. 1019, 82 L. Ed. 1461; *Powell* v. *Alabama*, 287 U. S. 45, 53 S. Ct. 55, 77 L. Ed. 158; *United States ex rel Hall* v. *Ragen*, 60 F. Supp. 820.

Petitioner did not waive his right to counsel, because it is admitted that he requested and was denied counsel.

The above State Constitutional provisions in the Declaration of Rights, were so sacred to the Tennessee Constitutional fathers, that in Article 11, Sec. 16, of the Constitution of Tennessee we find:

> "The declaration of right, hereto prefixed, is declared to be a part of the Constitution of this State, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the Bill of Rights contained is excepted out of the general powers of the government, and shall forever remain inviolate."

The following Tennessee Statute, also contemplates fair notice to the accused:

> "Tennessee Code Sec. 11624. Statement of offense. "The indictment must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in such manner as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment; and in no case are such words as "force and arms" or "contrary to the form of the statute" necessary."

Since Petitioner's conviction, and after holdings by the Supreme Court of Tennessee in *State ex rel Grandstaff* v. *Gore*, 182 Tenn. 94; and *McCummings* v. *State*, 175 Tenn. 309, that one need not be indicted as an habitual criminal to sustain such conviction, the Legislature of Tennessee evidenced its idea of the sacredness of formal pleadings and notice to the accused by modifying in the 1950 Supplement to the Code of Tennessee, Section 11863.5 as follows:

> "11863.5. Indictment to charge habitual criminality.—An indictment or presentment which charges a person, who is an habitual criminal as defined in this

chapter, with the commission of any felony specified in sections 10777, 10778, 10788, 10790, 10797 of the code, or a crime for which the maximum punishment is death, shall, in order to sustain a conviction of habitual criminality, also charge that he is such habitual criminal. Every person so charged as being an habitual criminal shall be entitled upon his motion therefor filed in the cause at any time prior to trial, to demand and to have from the state, a written statement of the felonies, prior convictions of which form the basis of the charge of habitual criminality, setting forth the nature of each such felony and the time and place of each such prior conviction. He shall not, without his consent, be required to go to trial within twenty days from and after the time when such statement was supplied to him or his counsel of record. (1939, Ch. 22, sec. 5, modified)"

Petitioner was entitled to counsel on the habitual criminal accusation, and in addition to the right to counsel provided in Article 1, Sec. 9 of the Constitution of Tennessee, heretofore quoted, the right is guaranteed by the following statutory provisions:

"Tenn. Code Sec. 11733. Entitled to counsel.—Every person accused of any crime or misdemeanor whatsoever is entitled to counsel in all matters necessary for his defense, as well as to facts as to law."

"Tenn. Code Sec. 11734. To be appointed by court.—If unable to employ counsel, he is entitled to have counsel appointed by the court."

"Tenn. Code Sec. 11547. Notice of charge, and of right to counsel.—When the defendant is brought before a magistrate upon arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate shall immediately inform him of the offense with which he is charged, and of his right to aid of counsel in every state of the proceedings."

"Tenn. Code Sec. 11548. Time to send for counsel.—The magistrate shall allow the defendant a reasonable

time to send for counsel, and, if necessary, shall adjourn the examination for that purpose."

We call to the attention of the Court that in Petitioner's case all of the foregoing constitutional and statutory mandates were ignored, and their violation by the State Court held not to violate due process under the laws of Tennessee or the 14th Amendment to the Constitution of the United States. We suggest that the State courts failure to comply with statutory and constitutional provisions was also a denial of equal protection to petitioner under the 14th Amendment.

Petitioner was entitled to notice of the habitual criminal accusation against him and a trial record sufficient to advise him or a reviewing court of the prior convictions, their number, grade or sufficiency to support the sentence of life imprisonment.

This question was raised in a multiple offender case in *Commonwealth ex rel Arnold* v. *Ashe*, (1945), 156 Pa. Super 451, 40 A 2nd 875, from which we quote:

"The order of the court below is fully sustained by the well considered opinion of Judge Egan. It is affirmed on that opinion.

We recognize that the act of April 29, 1929, P. L. 854 Sec. 921 et seq., which was in force when the sentences were imposed on relator under indictments to Nos. 742 and 743 June Sessions, 1934, provides in section 5 that a person need not be formally indicted and convicted as a previous offender in order to be sentenced for a second or subsequent offense under that act; and that the case of *Com. ex rel Cody* v. *Smith*, 327 Pa. 311, 193 A 38, holds that it is not necessary that the sentence imposed for a second offense should therein state specifically that it was increased by reason of the provisions of the act of 1929, supra. Nevertheless, *we are of opinion that there should be some proceeding of record by which it appears that the per-*

son sentenced was the same person who had previously been convicted, within five years, of one of the crimes specified in section 1 of the Act (now section 1108(a) of the Penal Code of 1939, 18 P. S. Sec. 5108 (a). And the term "conviction" is used in the act in its legal technical sense, as meaning "the ascertainment of guilt of the accused and judgment thereon by the court, implying not only a verdict but judgment or sentence thereon": *Com.* v. *Minnich* 250 Pa. 363, 367, 95 A. 565, 566, LRA 1916 B, 950; *Com.* v. *Vitale*, 256 Pa. 548, 550, 95 A 723. The defendant has a right to know at the time of his sentence that it has been increased because of his prior conviction of a crime falling within the category stated in the Act, within the previous five years, as defined in said Act, sec. 3 of the Act of 1929, sec. 1108(c) of the Penal Code of 1939, 18 P. S. Sec. 5108(c)," *so that he can appeal if he denies that he was the person alleged to have been previously convicted*, or that he was so convicted within the previous five years as defined in the Act. *The facts on which the doubling of the term of sentence depends should not rest in the undisclosed knowledge of the Court but should appear plainly of record somewhere so that the authority for the increased sentence is clearly established.*" (Emphasis supplied.)

Commonwealth ex Rel Arnold v. *Ashe*, 156 Pa Super 451, 40 A 2d 875.

In Petitioner's case the indictment (Pl. Ex. 1, R. 5, 6, 10) and judgment (Pl. Ex. 2, R. 7, 10, 12) constitute the trial court record, and fail to reveal the alleged prior convictions, or whether petitioner had three prior convictions above the grade of petit larceny or within the enumeration of the habitual criminal act (Appendix "B"). The State for Warden Fretag relied upon the regularity of judgments upon the habeas corpus hearing, and has effectively hidden its judicial tracks under the judgment and sentence of life imprisonment. The State concedes that the judgment recital that Petitioner appeared with counsel is false, but

still relies upon the alleged regularity of said judgment.

Although Petitioner alleged in his habeas corpus petition that no "judgments of prior conviction or other evidence was submitted to the jury on the Habitual Criminal Charge" (R. 3, Par. 6) the State chose to rely upon the oral recollection of its one and only witness, Attorney General Greenwell (R. 21, 22, 23) and the presumed regularity of judgment.

Petitioner's trial, upon an oral accusation that he was an habitual criminal, made for the first time when he appeared for trial on a 3 to 10 year housebreaking and larceny charge, a summary trial as an habitual criminal after he had requested and been denied counsel, and a sentence of life imprisonment as an habitual criminal was a fundamentally unfair trial proceeding violative of the 14th Amendment to the Constitution of the United States.

Petitioner's case is similar to the situation discussed by this Court in *Hauck* v. *Olson*, 326 U. S. 271, 66 S. Ct. 116, in the following language, to wit:

> "In state prosecutions a conviction on a plea of guilty, obtained by trick, Smith v. O'Grady, 312 U. S. 329, 334, 61 S. Ct. 572, 574, 85 L. Ed. 859, or, after refusal of a proper request for counsel, because of the accused's incapacity adequately to defend himself, Williams v. Kaiser, 323 U. S. 471, 472, 65 S. Ct. 363, 364, will not support imprisonment. Such procedure violates the Fourteenth Amendment to the Constitution. See Tomkins v. Missouri, 323 U. S. 485, 65 S. Ct. 370; Cochran v. Kansas, 316 U. S. 255, 62 S. Ct. 1068, 86 L. Ed. 1453. That Amendment is violated also when a defendant is forced by a state to trial in such a way as to deprive him of the effective assistance of counsel. Powell v. Alabama, supra, 287 U. S. 52, 58, 53 S. Ct. 58, 60, 77 L. Ed. 158, 84 A. L. R. 527; House v. Mayo, 324 U. S. 42, 65 S. Ct. 517. Compare Ex parte Hawk, 321 U. S. 114, 64 S. Ct. 448, 88 L. Ed. 572; Glasser v.

United States, 315 U. S. 60, 69, 70, 62 S. Ct. 457, 464, 465, 86 L. Ed. 680. When the state does not provide corrective judicial process, the federal courts will entertain habeas corpus to redress the violation of the federal constitutional right. White v. Ragen, 324 U. S. 760, 65 S. Ct. 978. When the corrective process is provided by the state but error, in relation to the federal question of constitutional violation, creeps into the record, we have the responsibility to review the state proceedings. Williams v. Kaiser, 323 U. S. 471, 472, 65 S. Ct. 363, 364; Tomkins v. Missouri, supra."

Hawk v. *Olson*, 326 U. S. 271, 66 S. Ct. 116.

Now, in Petitioner's case, why did the State authorities not advise him of the oral habitual criminal accusation until he appeared for trial on the 3 to 10 year housebreaking and larceny indictment? Was it a trick? Why did the trial court refuse his proper request for counsel after he was advised of the habitual criminal accusation? (R. 21, 22, 23). Why did the Court force the Petitioner to trial on the habitual criminal accusation after denial of his request for counsel?. (R. 21, 22, 23). Why did the Court not give a written charge to the jury? Was it because the habitual criminal charge was a small offense, or because the court was in a hurry, or that the rights of the accused was of no interest to the judicial authorities of the sovereign state of Tennessee? Was it because the Attorney General was under no obligation to protect the rights of an accused habitual criminal in the Courts of Tennessee? Was it because there was no proper judicial guidance on the part of the Court or of the State prosecuting authorities? Was it because of Petitioner's position in the strata of society? Was it because Petitioner needed no guidance or counsel? Was it because his case had been pre judged by the Court and the Prosecuting Officials of the State of Tennessee? Was it because such proceedings are consistent with the

statutes and constitutional provisions of Tennessee, except for those whom the Attorney-General chooses to charge as habitual criminals, without the intervention of a grand jury, a procedure required in all cases except habitual criminals?

Why is there no record in the trial court or in the record of Petitioner's habeas corpus proceeding to advise this court of the prior offenses upon which his judgment of conviction and sentence are based? Why is there no record to show that such alleged prior convictions were above the grade of petit larceny as required by Tenn. Code Section 11868.1 (Appendix "B") and why is there no record to show that such prior convictions, if any, are within the enumerated sections of the Code of Tennessee mentioned in the habitual criminal act. (Appendix "B")

Are the foregoing questions adequately answered by the testimony of Attorney General Greenwell (R. 21, 22, 23), the only evidence offered by the State in behalf of defendant Warden Pretag?

Why did the trial Court say to the jury "if they agreed to that he was to take three years in housebreaking and larceny, and if they agreed to hold up their right hands; and if he was guilty as an habitual criminal also to hold up their right hands," and so that was their verdict, he was found guilty of being an habitual criminal and of housebreaking and larceny," according to Attorney General Greenwell (R. 22). Does such a proceeding show a considered judgment of conviction by peers of the accused, or does it show a judgment and verdict rendered under the direction and will of the trial court?

In *Johnson* v. *Zerbst*, this Court in construing the requirements of the Sixth Amendment to the Constitution of the United States, which is similar in its requirements to

Article 1, Section 9, of the Constitution of Tennessee, as quoted on *Page 12* of this brief, said:

> "If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life and liberty. *A court's jurisdiction at the beginning of trial may be lost "in the course of the proceedings" due to failure to complete the court—as the Sixth Amendment requires—by providing Counsel for an accused who is unable to obtain counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus.*"
>
> *Johnson* v. *Zerbst*, 304 U. S. 458, 58 S. Ct. 1019, 82 L. ed. 1461.

Petitioner does not say that the 6th Amendment to the Constitution of the United States, as construed in *Johnson v. Zerbst*, is necessarily included in the 14th Amendment to said Constitution, but he does say that when the State of Tennessee included Article 1, Section 9 in the Declaration of Rights in its Constitution it included everything stated in the Sixth Amendment to the Constitution of the United States, and a violation thereof is within the protection of the 14th Amendment to the Constitution of the United States. (See Art. 1, Sec. 9 *typewritten Page 12*, of this brief).

The judgment recitals as to plea, read as follows:

"Came the Attorney General for the State, also defendant in custody, having counsel present, and on hearing the indictment read for plea thereto, defendant says that he *is guilty* of Housebreaking and Larceny and

also that he *is guilty of being an habitual criminal*" . . . (Pl. Ex. 2, R. 7, 10, 12).

It is admitted that Petitioner was not indicted as an habitual criminal (Pl. Ex. 1, R. 5, 6, 10, 22) so to sustain the judgment recital that he pleaded guilty as an habitual criminal, we must go outside the trial record, into thin air, unless we proceed entirely upon inference or supposition based entirely upon the judgment recital. The iniquity in any accusation not showing in the record, is that an accused may be deprived of his liberty in a "star chamber" proceeding, without judicial safeguards, and trial errors or deprivation of constitutional rights may be hidden behind the regularity ordinarily accorded to judgments.

Is a judgment, admittedly false, in its recital that Petitioner came, "having counsel" (R. 21, 22) entitled to credit in its recital that he pleaded "guilty of being an habitual criminal" (Pl. Ex. 2, R. 7, 10, 12) when it is necessary to go outside the trial record to show that he was so accused? (R. 22)

We note that the judgment (Pl. Ex. 2, R. 7, 10, 12) says that "upon their oaths the jurors say: they find the defendant guilty of housebreaking and larceny as charged and fix his punishment at 3 years confinement in the State Penitentiary and also find him guilty of being an habitual criminal. It is therefore the judgment of the Court, upon the verdict of the jury, that the defendant for the offense of which he stands convicted, shall be committed as an Habitual Criminal to the State Penitentiary for the remainder of his natural life." . . . (Pl. Ex. 2, R. 7, 10, 12)

Since the Jury returned a verdict of 3 years, the minimum for housebreaking and larceny, and found Petitioner guilty of being an habitual criminal, upon which the Court sentenced him to life imprisonment, what was the Court's instruction? Under the Habitual Criminal Act, *Williams*

Tenn. Code Supp. Sec. 11863.6 (Appendix "B") the jury could not fix a minimum sentence of 3 years on the housebreaking and larceny if petitioner was an habitual criminal, and on the other hand if the jury did intend to fix a minimum and maximum of 3 years on the housebreaking and larceny it would be an acquittal of the habitual criminal accusation. Yet this judgment was, under the facts of this case, peculiarly under the control and direction of the Trial Court, and if the judgment evidences the nature of the oral instruction to the jury, then evidently the trial court and the jury were both confused. (R. 21, 22, 23).

Summary of Argument

(b) Petitioner says that he has been imprisoned under the challenged judgment and sentence of life imprisonment (Pl. Ex. 2, R. 7, 10, 12) from May 17, 1949 to the present 1954; that he has fully served the 3 years imposed by the jury for housebreaking and larceny; that so much of the said judgment as found him guilty as an habitual criminal and sentenced him to life imprisonment as an habitual criminal, upon an oral accusation, his trial and conviction and sentence, after having demanded and been denied counsel, is void, and having served more than three years he is entitled to his freedom. Further, that the jury fixed his maximum sentence at 3 years, and that the judgment recital that he was an habitual criminal and subject to sentence of life imprisonment as an habitual criminal rendered said judgment void for contradiction and ambiguity, unsupported by accusation in the trial record, all in contravention of the 14th Amendment to the Constitution of the United States.

Petitioner was originally indicted for housebreaking and larceny at the March Term, 1949 of the Grand Jury for Knox County, Tennessee, a charge carrying a 3 to 10 year sentence. (Pl. Ex. 1, R. 5)

He was released on a $1,000.00 bond (R. 21) and appeared for trial on May 17, 1949 (Pl. Ex. 2, R. 7, 10) without an attorney (R. 3, Par. 6) also (R. 13, 14, 15, 17, 21, 22) intending to plead guilty to the housebreaking and larceny indictment (R. 2, 14) and when he appeared for trial he was for the first time advised that he would also be tried as an habitual criminal and subject to life imprisonment (R. 14, 15, 16, 17, 18, 20, 21, 22) upon which he promptly asked for opportunity to obtain an attorney, which request was denied by the trial court (Pl. Ex. 1 to 5; R. 2, 14, 16, 21, 22) with the suggestion that he consult with members of his family on his course of action, and he was advised that all he could do was plead guilty (R. 17). Petitioner was summarily put to trial on the housebreaking and larceny indictment and on the oral habitual criminal accusation (R. 21, 22) and sentenced to life imprisonment as an habitual criminal.

So far as Counsel for Petitioner has been able to determine, unwritten accusations are unknown to Anglo-Saxon or Common Law pleadings. No civil action can be instituted in the State of Tennesse without written pleadings, although, pleadings in the Justice of the Peace Courts or Courts of General Sessions are often in-artfully phrased they do indicate the subject matter involved.

So far as Counsel for Petitioner has been able to determine no offense or accusation except that one is a subsequent offender may be charged in the State of Tennessee except by indictment, presentment, or impeachment.

The Supreme Court of Tennessee said (R. 34) "As to being entitled to counsel, he would be entitled to have counsel on the charge for which he stood indicted, namely, housebreaking and larceny, *but he would not necessarily be entitled to notice that he would be tried on the offense of habitual criminal since the Statute is itself notice to an*

accused who is being tried for his fourth felony." (R. 34)

To the above statement of the Supreme Court of Tennessee we say that every statute on the books is notice of a possible accusation, but the accusation cannot be sustained without a formal charge that one has brought himself within the terms of the statute. The First Degree Murder statute is notice to every one that he may be so charged, providing he brings himself within the terms of the statute. But an indictment for voluntary or involuntary manslaughter will not sustain a conviction of murder in the first degree.

Petitioner says that the Courts of Tennessee and particularly the Supreme Court of Tennessee has confused notice of the law as shown by the statutes of the State with notice to the accused of the particular statute he is accused of violating. All persons are charged with knowledge of the law, but no person is charged with knowledge that the accusatory authority of the State has been invoked upon a particular charge until the accused is formally advised of the accusation, by indictment or otherwise. And Petitioner says that oral accusations as the basis of prosecution have never been sanctioned by the law of the land in the Common Law procedures as established in the United States, so far as he has been able to determine.

The Relief to Which Petitioner Is Entitled

(i) Petitioner is entitled to immediate release from the Tennessee State Penitentiary at Petros, Tennessee, because he has served more than three years, the sentence imposed by the jury upon the housebreaking and larceny indictment, which sentence the Petitioner did not challenge in this proceeding. This Court should vacate and void the sentence of life imprisonment because same was rendered in violation of due process under the 14th Amendment to the Constitution of the United States, because Petitioner had no pleaded,

or any, notice of the habitual criminal accusation against him, and because he requested, did not waive, and was denied counsel on such charge, and because there are no record recitals of prior convictions, their grade, number or sufficiency to show petitioner or a reviewing court by what authority he is held, and because his trial, judgment and conviction and sentence were wanting in fundamental fair trial procedures under the 14th Amendment to the Constitution of the United States.

APPENDIX "A"

Constitution of the United States, Amendment 14, Section 1

Citizenship; due process; equal protection of laws. Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX "B"

Williams Code of Tennessee
Habitual Criminals

Section
11863.1 Habitual Criminal Defined.
11863.2 Sentence.
11863.3 Pardoning power not impaired.
11863.4 Charge of being habitual criminal.
11863.5 Indictment.
11863.6 Verdict.
11863.7 Evidence of prior convictions.
11863.8 Provisions severable.

11863.1 Habitual Criminal Defined.—Any person who has either been three times convicted within this state of felonies, two of which, under section 11762 of the Code of Tennessee, rendered him infamous, or which were had under sections 10777, 10778, 10790 and 10797 of said code, or which were for murder in the first degree, rape, kidnapping for ransom, treason or other crime punishable by death under existing laws, but for which the death penalty was not inflicted, or who has been three times convicted under the laws of any other state, government or country of crimes, two of which, if they had been committed in this state, would have rendered him infamous, or would have been pun-

ishable under said sections 10777, 10778, 10788, 10790 and 10797 of said code, or would have been murder in the first degree, rape, kidnapping for ransom, treason or other crime punishable by death under existing laws, but for which the death penalty was not inflicted, shall be considered, for the purposes of this act, and is hereby declared to be an habitual criminal, provided that petit larceny shall not be counted as one of such three convictions but is expressly excluded, and provided further that each of such three convictions shall be for separate offenses, committed at different times, and on separate occasions. (1939, ch. 22, sec. 1.)

11863.2 Sentence.—When an habitual criminal, as defined in section 1 (11863.1) of this act, shall commit any of the felonies as defined in sections 10777, 10778, 10788 and 10797 of the Code of Tennessee, or any other felony within this state, which under section 11762 of the Code of Tennessee would render him infamous upon conviction, other than murder in the first degree, kidnapping for reason (ransom), rape, treason, or other crime punishable by death under existing laws, or shall commit murder in the first degree, kidnapping for reason, (ransom), rape, treason, or other crime punishable by death under existing laws, and upon conviction therefor the death penalty is not imposed as now provided by law, he shall, in either case, upon conviction, be sentenced as an habitual criminal, and his punishment shall be fixed at life in the penitentiary, and such offender shall not be eligible to parole, either as provided in sections 11767 through 11777 of the "Code of Tennessee or in sections 11797 (1) through 11797 (6) (11802.1-11802.3) of said Code, nor shall said sentence be reduced for good behavior, for other cause, or by any means, nor shall the same be suspended. (1939, ch. 22, sec. 2).

11863.3 Pardoning Power Not Impaired.—Nothing herein shall be construed as seeking or tending to impair the pardoning power of the governor. (1939, ch. 22, sec. 3.)

11863.4 Charge of Being Habitual Criminal.—When an habitual criminal, as defined in section 1 (11863.1) of this act, is charged, by presentment or indictment, with the commission of any felonies as defined in section 10777, 10778,

10788, 10790 and 10797 of the Code of Tennesse or any other felony, conviction for which will render him infamous under section 11762 of the Code of Tennessee or for which the maximum punishment is death, he may also be charged therein with being an habitual criminal, as defined in section 1 (11863.1), hereof, or may be charged only with the commission of such felony but in either case, shall, upon conviction, be sentenced and punished as an habitual criminal, as in this act provided. (1939, ch. 22, sec. 4)

11863.5 Indictment.—An indictment or presentment which charges a person who is an habitual criminal, as defined in section 1 (11863.1), hereof, with the commission of any felony as defined in sections 10777, 10778, 10788, 10790 and 10797 of the Code of Tennessee, or a felony, conviction for which will render him infamous, or for which the maximum punishment is death, may or may not also charge that he is such habitual criminal, but in either case the felony charge shall be deemed and construed as necessarily including and charging such person with being an habitual criminal, and no such indictment or presentment shall be subject to any objection for failure to specifically include a charge that such person is an habitual criminal. (1939, ch. 22, sec. 5)

11863.6 Verdict.—When an indictment or presentment charges an habitual criminal with a felony, as above provided, and also charges that he is an habitual criminal, as provided in section 1 (11863.1), it shall only be necessary for the jury, upon conviction, to find, and its verdict shall be, "We, the jury, find the defendant guilty as charged in the indictment," and whereupon the court shall impose sentence as provided in section 2 (11863.2) of this act.

When an indictment or presentment only charges an habitual criminal with the commission of a felony which, upon conviction therefor, will render him infamous, or for which the maximum punishment is death, if the verdict of the jury shall be the general verdict, as above, sentence shall be imposed as now provided by law for the offense charged, but if the jury also find that the defendant is an habitual criminal, its verdict shall be that, "We the jury, find that the defendant is an habitual criminal and guilty, as charged

in the indictment," and whereupon, sentence shall be imposed as provided in section 2 (11863.2) hereof. (1939, ch. 22, sec. 6)

11863.7 Evidence of Prior Conviction.—In all cases where a person is charged under the provisions of this act with being an habitual criminal, the record, or records, of prior convictions of such person upon charges constituting felonies, whether they were such as to carry with them a judgment of infamy under the laws of this state, shall be admissible in evidence, but only as proof that such person is, in fact, an habitual criminal, as herein defined, and a judgment of conviction of any person in this state, or any other state, country or territory, under the same name as that by which such person is charged with the commission, or attempt at commission, of a felony under the terms of this act, shall be prima facie evidence that the identity of such person is the same. (1939 ch. 22, sec. 7.)

11863.8 Provisions Severable.—The provisions of this act are hereby declared to be severable. If any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect, it being the legislative intent now hereby declared, that this act would have been adopted even if such unconstitutional or void matter had not been included therein. (1939 ch. 22, sec. 8.)

APPENDIX "C"

Tenn. Code Sec. 11738. "Plea of Guilty.—Upon the plea of guilty, when the punishment is confinement in the penitentiary, a jury shall be impaneled to hear the evidence and fix the time of confinement, unless otherwise expressly provided by this Code."

APPENDIX "D"

Tenn. Code Sec. 11749. "Judge's Charge in Felonies.—On the trial of all felonies, every word of the judge's charge shall be reduced to writing before given to the jury, and no part whatever shall be delivered orally in any such case, but shall be delivered wholly in writing. Every word of the charge shall be written, and read from the writing, which shall be filed with the papers, and the jury shall take it out with them upon their retirement."

Tenn. Code Sec. 11750. "Further Instructions Asked For.—If the Attorneys on either side desire further instructions given to the jury, they shall write precisely what they desire the judge to say further. In such case the judge shall reduce his decision on the proposition or propositions to writing, and read the same to the jury without one word of oral comment, it being intended to prohibit judges wholly from making oral statements to juries in any case involving the liberties and lives of the citizens."

Tenn. Code Sec. 11751. "Charges as to Different Grades of Offenses.—It shall be the duty of all judges charging juries in cases of criminal prosecutions for any felony wherein two or more grades or classes of offense may be included in the indictment, without any request on the part of the defendant to do so."

Petitioner here respectfully presents this his brief on the merits of his case with Appendix's "A" "B" "C" "D" and respectfully prays relief from the judgment and sentence of life imprisonment in the State Penitentiary, heretofore imposed upon him and in this proceeding challenged as void because rendered in violation of due process of law

under the 14th Amendment to the Constitution of the United States.

Respectfully presented:

In behalf of WILLIAM C. CHANDLER,
Petitioner,

By Counsel: EARL E. LEMING,
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Knoxville, Tennessee,

and

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Knoxville, Tennessee.

I, Earl E. Leming, Attorney for Petitioner, do hereby certify that I have this the 24th day of August, 1954, mailed a true carbon copy of the foregoing Brief On the Merits on Petitioners Petition for Certiorari to the Honorable Roy H. Beeler, Attorney General for the State of Tennessee, Attention Mr. Knox Bigham, Supreme Court Building, Nashville, Tennessee.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

No. 39.

WILLIAM C. CHANDLER,
Petitioner,

vs.

WARDEN FRETAG.

On Writ of Certiorari to the Supreme Court of the State of Tennessee.

BRIEF ON THE MERITS FOR RESPONDENT.

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SUBJECT INDEX.

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BRIEF ON THE MERITS FOR RESPONDENT.

MAY IT PLEASE THE COURT:

STATEMENT OF THE CASE.

On March 10, 1949, Petitioner was charged, by a three count indictment in the criminal Court of Knox County, Tennessee, with the offenses of housebreaking, larceny and receiving stolen property (R. 5). This indictment did not aver that Petitioner would be prosecuted as an habitual criminal. Following his indictment Petitioner was at

liberty on bond (R. 14, 21). On the habeas corpus hearing Petitioner testified that he was guilty of housebreaking and larceny and had no defense whatever to that (R. 14). He appeared in Court for trial on the housebreaking and larceny indictment on May 17, 1949, and was at that time first advised that he was to be tried as an habitual criminal (R. 14). He was accompanied by his wife and his brother, Reverend James Chandler (R. 18). Upon being advised that he was to be prosecuted under the Habitual Criminal Statute he requested the Judge to put the trial off and let him get an Attorney, but the trial Judge refused to grant this request (R. 14). It seems that the trial Judge had a set rule not to appoint Counsel for any Defendant able to make bond. He told Chandler that he had had from January to May to get a lawyer (R. 21). The evidence is in dispute as to the plea entered by Petitioner. Petitioner testified that he entered a plea only to the charge of housebreaking and larceny (R. 15). Assistant Attorney General Greenwell's testimony indicates that Petitioner also admitted his amenability to the Habitual Criminal Statute (R. 21). Greenwell's testimony is supported by the petition for the writ of habeas corpus filed by Petitioner's wife in his behalf, in which it is stated "that his plea of guilty of being an habitual criminal was not intelligently and knowingly entered" (R. 4).

It was further testified in behalf of Petitioner that on the trial no evidence of prior convictions was presented to the Jury (R. 14, 15, 18, 20). General Greenwell was positive that former judgments of conviction were read to the Jury (R. 21, 22). Petitioner admitted on the habeas corpus hearing that he had previously been convicted three times (R. 16). The trial of the indictment resulted in Petitioner's conviction of housebreaking and larceny and a finding by the Jury that he was guilty of being an habitual criminal. The judgment pronounced on the ver-

dict provided that Petitioner should be committed as an habitual criminal to the State Penitentiary for the remainder of his natural life (R. 7).

In its opinion on the habeas corpus case the Circuit Court of Knox County held that it was unnecessary for an indictment to contain notice that a Defendant would be prosecuted as an habitual criminal, because the charge of being an habitual criminal is not an independent offense (R. 34). In this connection the Court further held that the statute itself is sufficient notice (R. 36). The Court held that he waived his right to counsel (R. 34). The opinion of the Circuit Court was adopted as the opinion of the Supreme Court of Tennessee.

ARGUMENT.

Petitioner says that seven questions are presented to this Court for review. Respondent will endeavor to discuss these questions under three main topical headings.

I.

The Failure to Give Petitioner Pretrial Formal Written Notice, by Indictment or Otherwise, That He Would Be Tried as an Habitual Criminal, Did Not Violate His Rights Under the Federal Constitution.

Tennessee's Habitual Criminal Statute is Chapter 22 of the Public Acts of Tennessee of 1939, which is copied herein in Appendix A. The Act has since been amended but at the time of Petitioner's indictment, trial and conviction was in the form as it here appears. Section 1 of the Act defines an habitual criminal as any person who has been three times convicted in this State of felonies, two of which rendered him infamous under Code Section 11762, or were under certain designated Sections of the Code, or were for other offenses specifically named. The definition also includes convictions under the laws of any other State, Government or Country of similar crimes. It is provided that petit larceny is expressly excluded and is not to be counted as one of the three convictions. Section 2 of the Act provides that when an habitual criminal is convicted of any of the felonies referred to in Section 1, he shall be imprisoned in the Penitentiary for life. By Section 5 it is provided that the indictment for the fourth offense may or may not charge that the Defendant is an habitual criminal, but in either case the felony charged shall be deemed and construed as necessarily including and charging such person with being an habitual criminal. Section 7 provides for the admission in evidence of records of prior convictions.

Tennessee's Infamy Statute, Code Section 11762, is copied herein as Appendix B. This Section includes the of-

fenses of housebreaking, larceny, and receiving stolen property. Therefore the indictment in this case charged Petitioner with offenses for which life imprisonment could be imposed under Section 2 of the Habitual Criminal Act, if it be shown that Petitioner was an habitual criminal. The constitutionality of the Habitual Criminal Act was sustained by the Supreme Court of Tennessee in the case of McCummings v. State, 175 Tenn. 309, against the contention that allegations of former convictions must be included in the indictment.

This Court has on a number of occasions sustained habitual criminal or subsequent offender convictions by State Courts. Moore v. Missouri, 159 U. S. 673; McDonald vs Massachusetts, 180 U. S. 311; Graham v. West Virginia, 224 U. S. 616; Carlesi v. New York, 233 U. S. 51; and Gryger v. Burke, 334 U. S. 728.

In the opinion in McDonald v. Massachusetts it was stated that the Habitual Criminal Statute there involved simply imposed a heavier penalty on one convicted of a felony if he had been convicted of crimes before. The Court said at page 313: "The allegation of previous convictions is not a distinct charge of crimes, but is necessary to bring the case within the statute, and goes to the punishment only." The indictment in the McDonald case contained allegations of previous convictions.

In Graham v. West Virginia this Court approved the practice of proceeding against an habitual criminal by way of information following the conviction of the last offense. It was pointed out that in this proceeding he was not held to answer for an offense and that the information did not allege a crime. The Court stated that there was no occasion for an indictment. In this opinion the Court said:

> "Although the state may properly provide for the allegation of the former conviction in the indictment, for a finding by the jury on this point in connection

with its verdict as to guilt, and, thereupon for the imposition of the full sentence prescribed, there is no constitutional mandate which requires the state to adopt this course even where the former conviction is known. It may be convenient practice, but it is not obligatory. This conclusion necessarily follows from the distinct nature of the issue and from the fact, so frequently stated, that it does not relate to the commission of the offense, but goes to the punishment only, and therefore it may be subsequently decided."

It will thus be seen that in recidivist proceedings this Court has not regarded allegations of prior convictions as integral parts of the crimes charged that must be specifically pleaded by way of indictment. To the contrary it has been held that the fact of previous convictions goes to punishment only, and amply justifies an increased penalty for the latest offense. Tennessee follows the same reasoning. Tipton v. State, 160 Tenn. 664.

Thus far the States have been left free to determine for themselves the procedure to follow in calling to the attention of the sentencing authority the fact of prior convictions. The Massachusetts practice of averring them in the indictment for the last offense, as well as the West Virginia practice of proceeding by way of informatio-a following the conviction for the last offense, has been specifically approved. Tennessee's practice, at the time of Petitioner's conviction, was for the evidence of prior convictions to be presented to the Jury on the trial of the fourth offense. In that manner a Defendant is fully apprised of the previous convictions relied upon by the State and he has abundant opportunity to refute the State's evidence. He can deny that the convictions proved are such as to bring him within the Habitual Criminal Statute, and he can deny, and support his denial by evidence, that he is the person referred to by the records presented. At the time of sentencing he is well aware of the convictions

proved by the State and he knows then whether he is being punished under this statute. If he is dissatisfied with his conviction he has the right to appeal as in other criminal cases. Under the Tennessee practice there was no way for a Defendant to be hustled off to the Penitentiary under an habitual criminal life sentence without knowing the evidence relied upon and without having a full opportunity to cross-examine the witnesses against him and otherwise test the accuracy and reliability of the State's evidence of his former convictions. In the instant case the Petitioner had opportunity to do all these things. Despite his testimony to the contrary we think the evidence clearly shows that he was confronted with the records of previous convictions, and realizing that denial would be futile, readily admitted his guilt of being an habitual criminal.

Under the authority of other decisions of this Court Respondent respectfully insists that the due process clause of the Fourteenth Amendment does not require that matters of fact which might enhance punishment be formally pleaded, by way of indictment or otherwise.

In the case of Davis v. People, 151 U. S. 262, it was held that an indictment for murder is good, although it may not indicate, upon its face, in terms, the degree of crime and thereby the nature of the punishment that may be inflicted. It was held that the pleader need not indicate the degree, but that the indictment may leave the ascertainment of degree to the Jury. Such an indictment will support a conviction for murder in the first degree.

Davis v. People was followed by Bergemann v. Backer, 157 U. S. 655. This Court sustained a State Court conviction for murder in the first degree, under an indictment that did not aver, in terms, all the elements of that degree of the offense, against the contention that such procedure denied equal protection of the laws and due process. Ma-

terial to each of these cases was the fact that statutes authorized simplified indictments for murder in the first degree. The statutes that were involved also divided the common law crime of murder into two degrees and provided more severe punishment for the higher grade of the offense. The Davis and Bergemann cases are sound upon the reasoning that the statutes provided notice to anyone indicted under the simplified form for murder that he might be punished for the higher grade of the offense. It is axiomatic that all persons are charged with knowledge of the provisions of statutes. North Laramie Land Company v. Hoffman, 268 U. S. 276. Identical reasoning is applicable in the instant case. The Tennessee Court held in effect that the Habitual Criminal Statute itself is notice to an accused charged with one of the offenses therein enumerated that he might be subject to life imprisonment. We respectfully suggest that the effect of the Habitual Criminal Statute, as here applicable, was simply to amend the statutes punishing housebreaking, larceny and receiving stolen property, by providing that upon proof of three prior convictions, punishment for those offenses should be life imprisonment rather than the ten-year maximum. It can make no difference as far as Petitioner's rights are concerned that the implied amendment is carried in another statute, rather than being specifically set out in the Code Sections prescribing punishment for the three offenses.

Another reason that Petitioner's contention is lacking in merit is to be found in the proposition that the procedural requirements of due process for sentencing are entirely different to those applicable to determining the guilt or innocence of a Defendant. This was clearly pointed out in the case of Williams v. New York, 337 U. S. 241. There a Jury had found a Defendant guilty of murder in the first degree and had recommended life imprisonment. Following the verdict the trial Judge conducted what seems to have been an ex parte examination of the De-

fendant's character and background and considered a number of crimes thought to have been committed by Defendant but for which he had not been convicted. The Judge imposed the death sentence in the teeth of the Jury's recommendation, and his action was based in part at least upon the information obtained by the presentence investigation. This Court held that such procedure did not deny due process of law. In comparison with the practice followed in the Williams case it would appear that Chandler's rights were guarded zealously. Even though the evidence of prior convictions was material only in that it effected the punishment, Chandler, according to testimony presented for Respondent, at least had an opportunity to hear the evidence, cross-examine the witnesses, and deny the charge if he so chose. The Williams case points up quite clearly that in the matter of sentencing trial Courts have a wide range of latitude and may consider information derived from a variety of sources. Respondent suggests its obvious applicability here.

II.

The Trial, Conviction and Sentencing of Petitioner Without the Aid of Counsel Did Not Deprive Him of His Liberty in Violation of Rights Secured by the Fourteenth Amendment to the Constitution of the United States.

The Courts of Tennessee disposed of Petitioner's insistence as to denial of Counsel in the following manner:

> "As to being entitled to have counsel, he would be entitled to have counsel on the charge for which he stood indicted, namely, housebreaking and larceny, but he would not necessarily be entitled to notice that he would be tried on the offense of habitual criminal since the Statute is itself notice to an accused who is being tried for his fourth felony. It appears to the

Court in very strong circumstances that Chandler waived his right to counsel. To quote his own testimony, he said that he had no attorney to defend him on the charge of house-breaking and larceny because, 'knowing that I was guilty and I was going to plead guilty,' he considered it useless to employ counsel" (R. 34, 35).

"He was not denied any right to counsel because he had waived the right to counsel under the one thing that he could have been tried for and that was the crime of house-breaking and larceny" (R. 36).

We think that the foregoing statements are not unsound as a purely abstract legal proposition, although we realize full well that another tribunal might reach an entirely different conclusion on the question of waiver. Even so, it does not follow that Petitioner is thereby entitled to a reversal. This Court does not sit in review of mere errors of judgment committed by State Courts. If the State Court reached the proper conclusion it does not matter that that result was attained by the wrong route. In other words, the effect of the State Courts' holding was that the denial of Counsel did not operate to deprive Petitioner of his liberty without due process of law. If this is a correct conclusion, even though the reasoning be erroneous, the judgment of the State Court should be affirmed.

The due process clause of the Fourteenth Amendment does not require the States to furnish Counsel in every non-capital case. Betts v. Brady, 316 U. S. 455. There the Defendant was unable to employ Counsel and so advised the trial Judge. He requested that an Attorney be appointed to represent him but this request was declined. This Court affirmed the judgment of conviction and pointed out that the Defendant was not helpless, but was a man forty-three years old, of ordinary intelligence and ability to take care of his own interests on the trial of the issue before the

Court. The Court also referred to the fact that Defendant had once before been convicted in Criminal Court and was not wholly unfamiliar with that procedure.

Respondent urges that the situation here is quite similar to that before the Court in Betts v. Brady. The habeas corpus hearing failed to develop any special circumstances indicating that Petitioner was at a serious disadvantage by reason of the lack of Counsel. The petition for habeas corpus avers that Petitioner was a colored man, with little education and no technical legal training and no financial resources; that he was surprised, bewildered and confused and did not know that he was entitled to plead guilty on the housebreaking and larceny charge and at the same time plead not guilty to the habitual criminal accusation (R. 2). It was further averred that Petitioner entered his plea of guilty without knowingly, intelligently and understandingly knowing his rights or the consequences of such plea, except to the housebreaking and larceny charge (R. 3). The transcript of the testimony will be searched in vain for any evidence to support these allegations. It may have been that Petitioner was of limited mentality and education, but he did not so testify. It may have been that Petitioner was bewildered and confused by the legal processes which he was called upon to face, but he did not so testify. It may have been that he did not understand the consequences of the habitual criminal accusation, but he did not so testify. In short, there is an absolute absence of any evidence indicating a lack of ability on the part of Petitioner to take care of himself.

The meager gleanings from the record rather tend to support Respondent's insistence that Petitioner was in no wise over reached, and that he was not hampered by the lack of Counsel. He knew of his right to Counsel before he appeared for trial, because it is stated in his petition for habeas corpus that he knew his guilt on the house-

breaking and larceny charge and felt that an Attorney could do him no good on said charge (R. 2). He had not been incarcerated between the time of indictment and trial, because he had been at liberty on bond (R. 2, 14, 21). He was not tried and sentenced in the absence of friends and relatives, because his wife and brother were present (R. 18). He must not have been ignorant of Court procedure, because he had been convicted three times before (R. 16). He was not an immature youth, because his brother testified:

> "A. The Judge first asked me a question as to what we were going to do with William and I said that is a $64 question. Then the Judge motioned for me to come up and we talked and I mentioned some of the things my mother had said to me. I told him mother had informed me when he was a small child he was accidenfly hit in the head with an ax when we were residing at Concord some 43 years ago" (R. 17).

The habeas corpus case came on to be heard some three years after the trial of the criminal case. It follows that Petitioner must have been at least forty years old at the time of his conviction.

The trial of Petitioner as an habitual criminal presented a relatively simple issue. The question of his guilt of housebreaking and larceny was out of the way because he readily admitted that. The only question remaining for determination was whether he had previously been convicted of felonies that would bring him within the terms of the Habitual Criminal Act. Nobody knew better than he whether he had been so convicted. Had this accusation been unjust he could easily have denied it. As a matter of fact, the only logical inference is that he was subject to the Habitual Criminal Statute and well knew it at the time of his trial and conviction. Not only did he admit three previous convictions at the habeas corpus

hearing but he has consistently maintained a discreet silence about this feature of the case. Nowhere has he insisted that he had not been convicted for three felonies and he has not complained that the offenses were beyond the scope of Chapter 22 of the Public Acts of 1939. Nowhere does he attempt to explain his failure to appeal his habitual criminal conviction and thereby take advantage of the procedural machinery that would have enabled the Courts of Tennessee to investigate his claims in a more thorough manner. Respondent realizes that this Court will not determine the issue solely by the pragmatic test of whether Petitioner was or was not in fact an habitual criminal and actually subject to be sentenced as such. However the foregoing matters are pointed out as indicating that Petitioner has signally failed to show how Counsel could have been of any benefit to him.

On this habeas corpus hearing Petitioner was content to maintain a stony silence as to his background, his education, his knowledge of Court procedure, his financial resources and all other matters that would give a Court some insight into his ability to look after his own interests on the trial of the criminal case. We feel that this is fatal to his cause. Speaking of cases that had been reversed because of the lack of Counsel, this Court said in Foster v. Illinois, 332 U. S. 134, at page 137:

> "And so, in every case in which this doctrine was invoked and due process was found wanting, the prisoner sustained the burden of proving, or was prepared to prove but was denied opportunity, that for want of benefit of counsel an ingredient of unfairness actively operated in the process that resulted in his confinement."

To the same effect see Quicksall v. Michigan, 339 U. S. 660. The Petitioner had the burden of proving that the denial of Counsel deprived him of the essentials of justice.

Hawk v. Olson, 326 U. S. 271. It makes no difference that he requested an opportunity to get counsel and his request was refused. Betts v. Brady, supra. Neither does it make any difference that the conviction was under the Habitual Criminal Statute and that a sentence of life imprisonment was imposed. Gryger v. Burke, 334 U. S. 728.

III.

Petitioner's Insistence as to the Ambiguity and Meagerness of the Trial Record Does Not Entitle Him to the Relief Sought.

Petitioner's complaint about this feature of the case is that the trial record is insufficient in that it does not recite his previous convictions in detail. This is simply a matter of local practice and does not raise a question under the Federal Constitution. The judgment recites that Petitioner is guilty of the offense charged and of being an habitual criminal, and imposes a sentence of life imprisonment (R. 7). This is sufficient under Section 6 of the Habitual Criminal Act, which does not require the judgment to recite previous convictions. Under Tennessee practice the fact of previous convictions is presented by way of evidence. Section 7, Chapter 22, Public Acts of 1939. The evidence in a criminal case may be preserved of record only by a Bill of Exceptions. Fine v. State, 183 Tenn. 117. The duty of preparing a Bill of Exceptions rests upon the dissatisfied party. Darden v. Williams, 100 Tenn. 414. Petitioner did not appeal his conviction and therefore no Bill of Exceptions was prepared.

SUMMARY.

The Fourteenth Amendment to the Federal Constitution does not require Tennessee to plead formaliy the evidence which it will present to show aggravation of the offense, in order to justify the infliction of a more severe penalty.

Petitioner has failed to sustain the burden of proving that for want of benefit of Counsel an ingredient of unfairness actively operated in the process that resulted in his confinement.

Petitioner's complaint as to the inadequacy of the trial record does not raise a Federal question.

Respondent respectfully insists that the judgment of the Supreme Court of Tennessee should be affirmed.

Respectfully submitted,

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Assistant Attorney General
of Tennessee,

KNOX BIGHAM,
Assistant Attorney General
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Supreme Court Building,
Nashville, Tennessee,
Attorneys for Respondent.

ROY H. BEELER,
Attorney General of Tennessee,
Of Counsel.

I, Nat Tipton, Attorney for Respondent and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 9 day of September, 1954, I

served a copy of this Brief on Counsel for Petitioner by depositing the same in a United States mail box, with first class postage prepaid, addressed to Honorable Earl E. Leming, 508 Empire Building, Knoxville, Tennessee.

Nat Tipton,
Assistant Attorney General
of Tennessee.

APPENDIX A.

Chapter 22 of the Public Acts of Tennessee of 1939.

CHAPTER NO. 22.

Senate Bill No. 96.

(By Lovelace and Newman.)

AN ACT defining habitual criminals, and providing for their punishment.

Section 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, That any person who has either been three times convicted within this State of felonies, two of which, under Section 11762 of the Code of Tennessee, rendered him infamous, or which were had under Sections 10777, 10778, 10788, 10790 and 10797 of said Code, or which were for murder in the first degree, rape, kidnapping for ransom, treason or other crime punishable by death under existing laws, but for which the death penalty was not inflicted, or who has been three times convicted under the laws of any other state, government or country of crimes, two of which, if they had been committed in this State, would have rendered him infamous, or would have been punishable under said Sections 10777, 10778, 10788, 10790 and 10797 of said Code, or would have been murder in the first degree, rape, kidnapping for ransom, treason or other crime punishable by death under existing laws, but for which the death penalty was not inflicted, shall be considered, for the purposes of this Act, and is hereby declared to be an habitual criminal, provided that petit larceny shall not be counted as one of such three convictions, but is expressly excluded, and provided further that each of such three convictions shall be for separate offenses, committed at different times, and on separate occasions.

Section 2. BE IT FURTHER ENACTED, That, when an habitual criminal, as defined in Section 1 of this Act, shall commit any of the felonies as defined in Sections 10777, 10778, 10788, 10790 and 10797 of the Code of Tennessee,

or any other felony within this State, which under Section 11762 of the Code of Tennessee would render him infamous upon conviction, other than murder in the first degree, kidnapping for ransom, rape, treason, or other crime punishable by death under existing laws, or shall commit murder in the first degree, kidnapping for ransom, rape, treason or other crime punishable by death under existing laws, and upon conviction therefor the death penalty is not imposed as now provided by law, he shall, in either case, upon conviction, be sentenced as an habitual criminal, and his punishment shall be fixed at life in the penitentiary, and such offender shall not be eligible to parole, either as provided in Sections 11767 through 11777 of the Code of Tennessee, or in Sections 11797 (1) through 11797 (6) of said Code, nor shall said sentence be reduced for good behavior, for other cause, or by any means, nor shall the same be suspended.

Section 3. BE IT FURTHER ENACTED, That, nothing herein shall be construed or considered as seeking or tending to impair the pardoning power of the Governor.

Section 4. BE IT FURTHER ENACTED, That, when an habitual criminal, as defined in Section 1 of this Act, is charged, by presentment or indictment, with the commission of any felonies as defined in Sections 10777, 10778, 10788, 10790 and 10797 of the Code of Tennessee, or any other felony, conviction for which will render him infamous under Section 11762 of the Code of Tennessee, or for which the maximum punishment is death, he may also be charged therein with being an habitual criminal, as defined in Section 1 hereof, or may be charged only with the commission of such felony, but in either case, shall upon conviction, be sentenced and punished as an habitual criminal, as in this Act provided.

Section 5. BE IT FURTHER ENACTED, That, an indictment or presentment which charges a person who is

an habitual criminal, as defined in Section 1 hereof, with the commission of any felony as defined in Sections 10777, 10778, 10788, 10790 and 10797 of the Code of Tennessee, or a felony, conviction for which will render him infamous, or for which the maximum punishment is death, may or may not also charge that he is such habitual criminal, but in either case the felony charged shall be deemed and construed as necessarily including and charging such person with being an habitual criminal, and no such indictment or presentment shall be subject to any objection for failure to specifically include a charge that such person is an habitual criminal.

Section 6. BE IT FURTHER ENACTED, That, when an indictment or presentment charges an habitual criminal with a felony, as above provided, and also charges that he is an habitual criminal, as provided in Section 1, it shall only be necessary for the Jury, upon conviction, to find, and its verdict shall be, "We, the Jury, find the Defendant guilty as charged in the indictment," and whereupon the Court shall impose sentence as provided in Section 2 of this Act.

When an indictment or presentment only charges an habitual criminal with the commission of a felony, which, upon conviction therefor, will render him infamous, or for which the maximum punishment is death, if the verdict of the Jury shall be the general verdict, as above, sentence shall be imposed as now provided by law for the offense charged, but if the Jury also find that the Defendant is an habitual criminal, its verdict shall be that, "We, the Jury, find that the Defendant is an habitual criminal, and guilty, as charged in the indictment," and whereupon, sentence shall be imposed as provided in Section 2 hereof.

Section 7. BE IT FURTHER ENACTED, That, in all cases where a person is charged under the provisions of this Act with being an habitual criminal, the record, or

records, of prior convictions of such person upon charges constituting felonies, whether they were such as to carry with them a judgment of infamy under the laws of this State, shall be admissible in evidence, but only as proof that such person is, in fact, an habitual criminal, as herein defined, and a judgment of conviction of any person in this State, or any other state, country or territory, under the same name as that by which such person is charged with the commission, or attempt at commission, of a felony under the terms of this Act, shall be prima facie evidence that the identity of such person is the same.

Section 8. BE IT FURTHER ENACTED, That, the provisions of this Act are hereby declared to be severable. If any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this Act shall continue in full force and effect, it being the legislative intent now hereby declared, that this Act would have been adopted even if such unconstitutional or void matter had not been included therein.

Section 9. BE IT FURTHER ENACTED, That, all Acts, and parts of Acts, in conflict herewith, are hereby repealed.

Section 10. BE IT FURTHER ENACTED, That, this Act take effect from and after its passage, the public welfare requiring it.

Passed February 14, 1939.

Blan R. Maxwell,
Speaker of the Senate.

John Ed O'Dell,
Speaker of the House of Representatives.

Approved Feb. 21, 1939.

Prentice Cooper,
Governor.

APPENDIX B.

Section 11762 of the Code of Tennessee, as in Force at the Time of Petitioner's Conviction.

SECTION 11762 OF THE CODE OF TENNESSEE.

"When judgment renders defendant infamous.—Upon conviction of the crimes of abusing a female child, arson and felonious burning, bigamy, burglary, felonious breaking and entering a dwelling house, bribery, buggery, counterfeiting, violating any of the laws to suppress the same, forgery, incest, larceny, horse-stealing, perjury, robbery, receiving stolen property, rape, sodomy, stealing bills of exchange or other valuable papers, subornation of perjury, and destroying a will, it shall be part of the judgment of the court that the defendant be infamous, and be disqualified to exercise the elective franchise, and he shall also be disqualified to give evidence." (Note: This Section was amended by Chapter 64 of the Public Acts of 1941 so as to include the offense of "felonious breaking into a business house, out house other than a dwelling house.")